

**ATTORNEY GENERAL OF THE STATE OF NEW YORK
INTERNET BUREAU**

IN THE MATTER OF:

BRAD GREENSPAN

ASSURANCE OF DISCONTINUANCE

Pursuant to the provisions of Article 22-A of the New York General Business Law, and Section 63(12) of the Executive Law, Eliot Spitzer, Attorney General of the State of New York, has made an inquiry into certain business practices of Brad Greenspan. Based upon that inquiry, the Attorney General concludes as follows:

FINDINGS OF ATTORNEY GENERAL

1. Brad Greenspan founded Intermix Media, Inc. (“Intermix”)¹ in 1999 and was its Chief Executive Officer from July 2000 until October 2003. He was also Chairman of Intermix’s Board of Directors from its inception until October 2003.

2. Beginning in late 2002, Greenspan directed Intermix’s entrance into the business of distributing downloadable ad-serving software programs – commonly known as “adware.” Intermix’s adware programs included “KeenValue” (which delivered pop-up advertisements); “PowerSearch” (a toolbar resting on the user’s web browser); and “Incredifind” (which automatically redirected users to Intermix’s search engine). Since active distribution of these programs began in early 2003, over three million Intermix adware programs have been

¹ Intermix was known as eUniverse, Inc. during Greenspan’s control of the company.

downloaded by New Yorkers alone.

3. Greenspan directed that Intermix's adware programs be bundled with other free software programs that were offered to consumers for download. Thus, Intermix would first advertise a free, desirable program – such as a screensaver or a game – to consumers. If a consumer chose to download the free program, Intermix would then install both the requested program as well as one or more adware programs onto the consumer's computer. Greenspan directed that any disclosure of Intermix's adware programs be contained within a linked End User License Agreement, that the average consumer would be unlikely to read in any detail. As a result, Intermix's adware programs were distributed without obtaining consumers' affirmative and informed consent before download and installation.

4. Greenspan further directed that Intermix's adware programs should not be made to be simple to uninstall. For instance, when a user would uninstall or remove the original, desired program with which Intermix's adware was bundled, Intermix's adware programs sometimes remained behind, installed and fully operational. Furthermore, Intermix's programs were often not listed in the "Add or Remove Programs" utility in the Microsoft Windows operating system – the most common mechanism by which consumers remove programs from their computers. Intermix also failed to provide an uninstall utility within the adware programs' program folders. Furthermore, Intermix's adware programs were never listed in the "All Programs" or "Programs" list accessed from the Start button on Microsoft Windows.

STATUTORY VIOLATIONS

5. The Attorney General finds that by engaging in the practices described in Paragraphs 1 through 4 above, Greenspan has violated New York General Business Law §§ 349

and 350, New York Executive Law § 63(12) and New York common law.

6. **IT NOW APPEARS** that Greenspan is willing to enter into this Assurance of Discontinuance, without admitting or denying the findings contained herein. The Attorney General is willing to accept the terms of this Assurance of Discontinuance pursuant to Executive Law § 63(15) in lieu of commencing a special statutory proceeding

AGREEMENT

IT IS HEREBY UNDERSTOOD AND AGREED by and between Greenspan and the Attorney General that:

7. Within thirty days of the entry of the Assurance, Greenspan shall tender to the Attorney General the amount of \$750,000, representing \$350,000 in disgorgement of unjust enrichment, \$350,000 in penalties and \$50,000 in costs, to be paid by certified check, payable to the State of New York Department of Law, and delivered to: Eliot Spitzer, Attorney General of the State of New York, 120 Broadway, New York, New York 10271, Attention: Justin Brookman, Internet Bureau.

8. Greenspan agrees not to violate §§ 349 and 350 of the New York Business Law or any New York common law with respect to the distribution of any advertising or ad-serving programs over the internet. Specifically, to the extent he or any of his agents distributes any advertising or ad-serving program over the internet, Greenspan agrees to provide to consumers clear and conspicuous notice of the programs and clear and conspicuous disclosure of all their material functionality.

9. Nothing contained in this Assurance shall be construed to deprive any consumer or other person or entity of any private right under the law.

10. Any violation of the terms of this Assurance shall constitute prima facie evidence of violation of the applicable law in any civil action or proceeding thereafter commenced against Greenspan by the Attorney General.

11. Greenspan agrees not to seek or accept, directly or indirectly, indemnification from any source, including but not limited to payment made pursuant to an indemnification agreement or insurance policy, for any monies set forth herein paid to the Attorney General.

12. Nothing contained herein shall be construed as relieving Greenspan of the obligation to comply with all state and federal laws, regulations or rules, nor shall any of the provisions of this Assurance be deemed permission to engage in any act or practice prohibited by such law, regulation or rule.

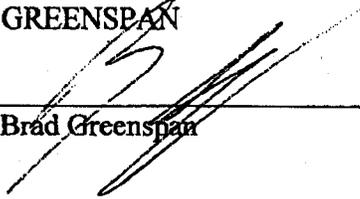
13. The acceptance of this Assurance by the Attorney General shall not be deemed approval by the Attorney General of Greenspan's business practices, and Greenspan shall make no representation to the contrary.

14. The execution date of this Assurance shall be September ²⁸____, 2005.

WHEREFORE, the following signatures are affixed hereto this ^{28th}____ day of September, 2005.

BRAD GREENSPAN

By:



Brad Greenspan

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Justin Brookman

Assistant Attorney General

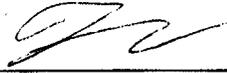


Kenneth M. Dreifach
Assistant Attorney General In Charge
INTERNET BUREAU

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