

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

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THE PEOPLE OF THE STATE OF NEW YORK
by **ELIOT SPITZER, Attorney General**
of the State of New York,

**CONSENT AND
STIPULATION**

Petitioners,

Index No. 401394/05

-against-

INTERMIX MEDIA, INC.,

Respondent.
-----X

WHEREAS the Attorney General believes such resolution to be in the public interest;

IT IS HEREBY ACKNOWLEDGED, STIPULATED, CONSENTED TO, AND

AGREED, by and between Eliot Spitzer, Attorney General of the State of New York, attorney for Petitioners herein, Justin Brookman, Assistant Attorney General, of counsel, and Respondent Intermix Media, Inc., and its attorney Linda Goldstein, that:

1. Respondent has received a copy of this Consent and Stipulation and the annexed Consent Order and Judgment and knows the contents thereof and understands the obligations and duties imposed by such Consent Judgment;

2. This Consent and Stipulation is entered into by Respondent as its own free and voluntary act with the full knowledge and understanding of the nature of this action and the obligations and duties imposed upon it by the Consent Judgment and consent to the entry thereof without further notice;

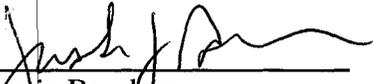
3. No promises, offers, agreements or inducements of any nature whatsoever have been made to Respondent by Petitioners or their attorneys or any employee in the Office of the Attorney General of the State of New York to procure this Consent and Stipulation;

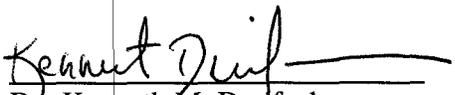
4. Nothing contained in the annexed Consent Order and Judgment constitutes approval by the Attorney General of Respondent's practices, and Respondent shall not make any representations to the contrary.

Dated: September 28, 2005
New York, New York

For Petitioners:

ELIOT SPITZER
NEW YORK ATTORNEY GENERAL
INTERNET BUREAU


By: Justin Brookman
Assistant Attorney General
New York State Attorney General
Internet Bureau
120 Broadway
New York, NY 10271
(212) 416-8196


By: Kenneth M. Dreifach
Assistant Attorney General in Charge
Internet Bureau

For Respondent:


By: Linda Goldstein
Manatt, Phelps & Phillips LLP
7 Times Square
New York, NY 10036
(212) 790-4500


By: Christopher Lipp
General Counsel, Intermix
Media, Inc.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

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THE PEOPLE OF THE STATE OF NEW YORK
by **ELIOT SPITZER, Attorney General**
of the State of New York,

**CONSENT ORDER
AND JUDGMENT**

Petitioners,

Index No. 401394/05

-against-

INTERMIX MEDIA, INC.,

Respondents.
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Petitioners having filed a Verified Petition pursuant to New York Executive Law § 63(12), General Business Law (“GBL”) §§ 349 and 350, and common law alleging that Respondents deceptively distributed and installed spyware programs on millions of computers; and

UPON the Notice of Verified Petition, dated April 28, 2005; the Verified Petition, verified on April 28, 2005; and the Affirmation of Assistant Attorney General Justin Brookman, dated April 18, 2005, together with the exhibits thereto;

UPON all other papers and proceedings heretofore had herein;

NOW, on motion of Eliot Spitzer, Attorney General for the State of New York, attorney for petitioners herein, Justin Brookman, Assistant Attorney General, of counsel, and upon the consent of Respondent Intermix Media, Inc. (“Respondent”), its principals and officers, and its attorney Linda Goldstein and the Consent and Stipulation dated September 27, 2005, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

PARTIES SUBJECT TO THE ORDER

1. **ORDERED, ADJUDGED AND DECREED** that this Consent Order and Judgment (“Order”) shall extend to Intermix Media, Inc. (“Intermix”), its principals, directors, officers, shareholders, employees, agents, assigns, and successors; and it is further

DEFINITIONS

2. **ORDERED, ADJUDGED AND DECREED** that for the purposes of this Order the following definitions shall apply:
 - (a) “Bundling” — The term “bundling” means including additional programs and/or unrelated functionality with a program that is made available for download over the internet;
 - (b) “Clear and Conspicuous” — The term “clear and conspicuous” means that such disclosure shall be of such size, color and/or contrast as to be readily noticeable and understandable by the person to whom it is being disclosed, and that such disclosure be adjacent to the respective offer being made;
 - (c) “Consumer” — The term “consumer” refers to any person who downloads a software application from the internet;
 - (d) “Pop-up Program” — The term “pop-up program” refers to Intermix program KeenValue and any other program that generates pop-up advertisements to a computer user, with the exception that this definition shall not include scripts on Intermix web pages that generate pop-up advertisements when consumers visit Intermix web domains;
 - (d) “Redirect Program” — The term “redirect program” refers to Intermix programs Incredifind, Grip NetGuide, PerfectNav and any other program that redirects erroneous,

mistyped or any other internet address to different internet addresses (including Intermix web addresses);

(e) "Toolbar Program" — The term "toolbar program" refers to Intermix programs SirSearch toolbar, PowerSearch toolbar, TAF toolbar, Grip toolbar and any other program that places onto users' web browsers a "toolbar," offering features such as buttons, links and/or search engine access;

(f) "Updater Program" — The term "updater program" refers to Intermix programs Updater, WUpdater, SearchUpdater and any other program that allows remote updating of installed software or the installation of new software or functionality on a computer; and it is further

PROHIBITED PRACTICES

3. **ORDERED, ADJUDGED AND DECREED** that Respondent is hereby permanently enjoined from engaging in any and all of the following acts or practices:

(a) distributing to consumers any downloadable ad-serving software program, including any redirect program, pop-up program or toolbar program, provided, however, that with respect to any toolbar program this prohibition shall expire five years following the date of entry of this Order;

(b) distributing to consumers any program or unrelated functionality through bundling without clear and conspicuous disclosure of any bundled programs or unrelated functionality;

(c) adding programs or functionality to any computer through an updater program, unless so required by a court of law or other administrative or regulatory authority, or in order to

fix a flaw or bug in an Intermix program; and it is further

DISGORGEMENT, PENALTIES AND COSTS

4. **ORDERED, ADJUDGED AND DECREED** that within thirty days of the entry of the Order, Respondent shall tender to the Attorney General as disgorgement, penalties and costs the total of \$7,500,000, representing \$3,675,000 in disgorgement of all worldwide net revenues from Intermix's adware business and \$3,825,000 in penalties and costs, to be paid by certified check payable to the State of New York. Such certified checks shall be delivered to: Eliot Spitzer, Attorney General of the State of New York, 120 Broadway, New York, New York 10271, Attention: Justin Brookman, Internet Bureau; and it is further

MONEY JUDGMENT UPON DEFAULT

5. **ORDERED, ADJUDGED AND DECREED** that upon Respondent's failure to make any payment as provided in the above paragraphs within five (5) days of the date that payment is due pursuant to those paragraphs, a money judgment in the amount due, plus interest, shall be entered in favor of Attorney General of the State of New York, 120 Broadway, New York, New York 10271, and the Attorney General shall have execution thereof; and it is further

OTHER CONDITIONS

6. **ORDERED, ADJUDGED AND DECREED** that to remedy past alleged deceptive practices, Settling Respondent shall upon entry of this Order:
- (a) for any web page to which Intermix redirects users through a previously-installed Redirect Program, post an easily understood explanation of any Redirect Program that

redirects to that web page, and provide a clear and conspicuous link to a fully-functional uninstall utility that removes all functionality, files, folders, registry keys and values and any other affiliated code from a user's computer; such link shall be prominently placed on the web page, readable without scrolling down the page, and in a large, easily-read font;

(b) take all necessary steps to render previously-installed KeenValue software non-operational and ensure that it no longer serves pop-up or any other advertisements to consumers, and within sixty days of the entry of this Order provide this Office with an Affidavit setting forth such steps and such effect;

(c) cooperate in any Attorney General investigation into the software distribution practices of Intermix, its agents, or any other company; and it is further

CONSUMER RIGHTS

7. **ORDERED, ADJUDGED AND DECREED** that nothing contained in this Order shall be construed to deprive any consumer or other person or entity of any private right under the law; however, this document does not constitute an admission or denial of guilt or liability on the part of the Respondent, and it is further

VIOLATIONS OF THIS ORDER

8. **ORDERED, ADJUDGED AND DECREED** that this Court shall retain jurisdiction over any action, motion or application relating to this Order, including without limitation any action for civil contempt alleging violation of any provisions of this Order.

Notwithstanding the forgoing, in the event that the Attorney General believes that Respondent has violated this Order and intends to file a motion or pleading seeking contempt of court or other sanctions for violation of this Order, the Attorney General

shall first give Respondent five business days notice before filings such motion or pleading. Notice shall be given by overnight mail addressed to the attention of: Chief Executive Officer, Intermix Media, Inc., 6060 Center Drive, Suite 300, Los Angeles, CA 90045. The giving of such notice shall not prevent the Attorney General from beginning such proceeding following the expiration of the five business day period. Prior to the expiration of such period, Intermix may respond orally or in writing why such motion or pleading should not be filed; and it is further

RELIANCE UPON TRUTHFUL REPRESENTATIONS

9. **ORDERED, ADJUDGED AND DECREED** that any representations and agreements by the Attorney General as part of this Order are expressly conditioned upon the truthfulness and accuracy of the representations made by Respondent and its counsel during this investigation; and it is further

RELEASE

10. **ORDERED, ADJUDGED AND DECREED** that no term or provision of this Order, whether taken individually or together, shall estop or otherwise deprive the Attorney General of its standing or of any other right it may have to bring any claim on behalf of any person or entity except the Attorney General releases any claim seeking disgorgement, restitution, damages, penalties or any other monetary or equitable relief against Respondent and all of its past and present subsidiaries, successors, assigns, officers, directors, employees, shareholders and attorneys, with the exception of Brad Greenspan, for the deceptive distribution and installation of Incredifind, PerfectNav, Grip NetGuide, Grip Toolbar, PowerSearch Toolbar, SirSearch Toolbar, TAF Toolbar,

Keenvalue, Updater, Wupdater and SearchUpdater, where such claim arose prior to the date of execution of this Order. All other rights and claims on the part of the Attorney General, whether arising prior to or after the date of this Order, shall remain unaffected; and it is further

FURTHER AND OTHER RELIEF

11. **ORDERED, ADJUDGED AND DECREED** that any party to this Order may apply to this Court for such other and further relief as may be necessary to effectuate the terms of this Order, upon ten (10) days written notice to all other parties, deliverable by certified mail.

DATED: New York, NY
 September __, 2005

SO ORDERED AND ENTERED
