

= Movieland =

Movieland , also known as Movieland.com , Moviepass.tv and Popcorn.net , is a subscription @-@ based movie download service that has been the subject of thousands of complaints to the Federal Trade Commission , the Washington State Attorney General 's Office , the Better Business Bureau , and other agencies by consumers who said they were held hostage by its repeated pop @-@ up windows and demands for payment , triggered after a free 3 @-@ day trial period . Many said they had never even heard of Movieland until they saw their first pop @-@ up . Movieland advertised that the service had " no spyware " , and that no personal information would need to be filled out to begin the free trial .

The Federal Trade Commission (FTC) filed a complaint against Movieland and eleven other defendants in August 2006 , charging them with having " engaged in a nationwide scheme to use deception and coercion to extract payments from consumers . " The Attorney General of the state of Washington also filed a complaint , charging Movieland and several other defendants with violating that state 's Computer Spyware Act and its Consumer Protection Act .

= = Overview = =

Movieland advertises its movie download service by using pop @-@ up ads at other sites . The ads offer a three @-@ day free trial , with access to members @-@ only content including music , news , updated sports scores and adult movies . The ads say there are no forms to fill out , and no need to provide a credit card number or an e @-@ mail address , making the trial appear anonymous . The site 's homepage states that it has " No Spyware " , is " Virus Free " , and " No Extra Charge " . The site installs a program , MediaPipe , which is used to access the service .

= = Early consumer complaints = =

Movieland.com began operations sometime in the fall of 2005 or earlier . Consumer complaints began soon thereafter . Most consumers claimed they had never signed up for the free trial , never used the service , and never even heard of Movieland until they got their first pop @-@ up demand for payment . Some said they found the software on their computers after downloading a screensaver or other free utility . The company denied that it installed its software by stealthy means .

Media coverage as early as January 2006 recounted consumer complaints and mentioned that several anti @-@ spyware companies were buying Google advertisements boasting their product 's ability to " Remove Movieland Now " . In a report updated February 20 , 2008 , the Berkman Center for Internet & Society at Harvard Law School calls Movieland 's MediaPipe component " badware " because " it does not fully disclose what it is installing , does not completely remove all components and ' obligations ' during the uninstall process , and modifies other software without disclosure . " Richard Stiennon of IT @-@ Harvest referred to Movieland as a form of " Ransomware " due to its behaviour . As of July 2008 , the MediaPipe report is still cited by the Berkman Center for Internet & Society at Harvard Law School .

= = Complaints by the FTC = =

On August 8 , 2006 , the FTC filed a complaint in United States District Court " to obtain preliminary and permanent injunctive relief , rescission of contracts , restitution , disgorgement and other equitable relief for Defendants ' deceptive and unfair acts or practices in violation of Section 5 (a) of the FTC Act " .

The complaint alleged that the defendants were demanding payment to fix a problem that they themselves created , and were installing disruptive software that could not be removed through reasonable means . According to the FTC complaint , Movieland repeatedly bombarded consumers with pop @-@ up windows , accompanied by music that lasted nearly a minute . They demanded a

minimum payment of \$ 29 @. @ 95 to end the recurring pop @-@ up cycle , claiming that consumers had signed up for a three @-@ day free trial and did not cancel the service before the trial period was over .

The complaint charged that :

Installation of Defendants ' download manager is merely a smoke screen concealing Defendants ' true purpose : to install software and other files onto consumers ' computers that enable Defendants to launch pop @-@ up windows on consumers computers demanding payments to Defendants . These pop @-@ up windows , which display both textual and audiovisual payment demands , significantly disrupt consumers ' use of their computers . After Defendants cause these pop @-@ up payment demands to display on a particular computer for the first time , they cause them to redisplay again and again with ever @-@ increasing frequency . "

The pop @-@ ups had a large dark background and took up much of the screen , blocking access to other windows , and did not contain close or minimize buttons ; forcing the user to continue . The first pop @-@ up showed the date and time " our content access software was installed on your system and your 3 day free trial began " , the text " Click ' Continue ' to purchase your license and stop these reminders " , and a graphic reading " STOP THESE REMINDERS NOW " and " CLICK CONTINUE " . The only option offered was the button labeled " Continue " .

Clicking " Continue " brought up the next pop @-@ up , a 40 @-@ second audiovisual clip featuring a woman who introduced herself as " your personal customer service representative " and stated " Because you did not cancel during your trial period , you are now legally obligated to make your payment as per the terms and conditions you agreed to when you installed our content delivery software . " As the clip neared its conclusion , a new dialog box entitled " PAYMENT OPTIONS " appeared . Choosing its " Close this window " option ended the pop @-@ ups until the unvarying cycle began again .

In addition , the complaint alleged that the defendants made numerous false statements in attempting to collect payments from consumers , claiming that the computer owner or someone else consented to receiving the pop @-@ up payment demands until they paid , the owner of any computer that received the pop @-@ ups was legally obligated to pay Movieland , and that the computer owner was obligated to satisfy any contract that any other person entered into while using the computer . The only customer service telephone number provided was a 900 number . When consumers called it , a recorded greeting told them that they would incur a \$ 34 @. @ 95 charge if they did not hang up within three seconds .

The complaint also alleged that the defendants made it difficult or impossible for consumers to uninstall the software . Those attempting to remove it through the Windows Control Panel " Add or Remove Programs " function were redirected to a web page telling them that they had to pay the \$ 29 @. @ 95 fee to stop the pop @-@ ups . The only way many consumers could regain control of their computers was to pay the fee , or pay a computer technician to remove the software .

= = = Movieland 's position = = =

Movieland representatives said the downloads were not spyware and did not get on computers accidentally , insisting they were not " drive @-@ by downloads " . They said the FTC lawsuit was " improperly brought " , and pointed out that at the time the complaint was filed a federal judge rejected the FTC 's request for a temporary restraining order that would have immediately ended the cited billing practices .

The terms of service at the Movieland web site warned that if users did not cancel or pay during the three @-@ day period , pop @-@ up billing reminders would begin and " will appear more frequently until you choose one of the payment options and pay for the license . "

Movieland said the pop @-@ ups were " an anti @-@ fraud mechanism " that cannot be received without consumers intentionally downloading the software through several intentional steps , each of which has a default setting of " cancel " . The company also stated " there are no extrinsic programs (adware or otherwise) bundled with our software . " The company disputed the FTC claim that the software was " very difficult to get rid of " , and said it could be removed using the Windows Control

Panel .

= = = Defendants = = =

The following ten companies and two individuals were named as defendants in the FTC complaint :

Digital Enterprises , Inc. d / b / a Movieland.com

Triumphant Videos , Inc. d / b / a Popcorn.net

Pacificon International , Inc. d / b / a Vitalix

Alchemy Communications , Inc .

AccessMedia Networks , Inc .

Innovative Networks , Inc .

Film Web , Inc .

Binary Source , Inc. d / b / a Moviepass.tv

Mediacaster , Inc. d / b / a Mediacaster.net

CS Hotline , Inc .

Easton Herd , sole officer and director of Digital Enterprises and Triumphant Videos

Andrew Garroni , an officer or director of Pacificon , Alchemy , Film Web , and Binary Source

= = = Pre @-@ trial stipulations = = =

In November 2006 , the defendants and the FTC signed stipulations governing their pre @-@ trial conduct . Without admitting any wrongdoing , violation of the law , or involvement in the acts and practices alleged in the complaint , the defendants agreed to make clear and prominent disclosures prior to any software download or installation , to not download or install software without the user 's explicit consent and without disclosing clearly and prominently in the site 's terms of service the nature , frequency , and duration of any pop @-@ up windows that may appear regarding any purported obligation for payment . The pop @-@ ups also must not lock out access to the rest of the computer .

They also agreed to fixed limits on how many pop @-@ ups they can generate on a computer (maximum of 5 per day , 1 per hour) , the requirement to provide a mute button for any sound content in the pop @-@ ups and be able to close the windows , and provide a hyperlink with toll @-@ free number and email utility , to request stopping the pop @-@ ups under certain conditions . The defendants also promised to clearly label any single @-@ click download or install buttons , and not pre @-@ select these as the default .

They are also required to not represent that consumers have any " legal " or " contractual " obligation to pay for the software unless the computer owner has provided personal identification and agreed to pay , and that failure to pay will result in collection proceedings or affect the computer owner 's credit status unless the owner has provided personal identification such as a credit card and agreed to pay . Customer service agents may state that they " believe " the computer owner is responsible for paying for the download , and offer several purchase options including a one @-@ time 30 @-@ day non @-@ renewing license for \$ 29 @. 95 , after which access to the service will terminate .

= = = FTC settlement = = =

The FTC complaint was scheduled to be tried in United States District Court in January 2008 , but before trial , the defendants chose to settle out of court with both the FTC .

Movieland settled with the FTC in September 2007 . Without admitting any wrongdoing or violation of the law , the defendants agreed to make permanent the terms of the pre @-@ trial stipulations including limiting the number , frequency and duration of the billing pop @-@ ups ; and to pay the FTC \$ 501 @, 367 to reimburse consumers who paid for the program as a result of the repeated pop @-@ up demands . The defendants also agreed to stop offering anonymous free trials , have users certify at install time that they are at least 18 years of age , provide an install @-@ time link to

their terms of service or end user license agreement , not download software that reinstalls itself after a user has removed it , and to prominently post removal instructions at their web sites .

The agreement also requires Herd and Garroni to notify the FTC of any change of name , address or employment status , and of any new business affiliations , for five years .

= = Complaints by the State of Washington = =

On August 14 , 2006 , Rob McKenna , the Attorney General of the state of Washington charged Movieland , Digital Enterprises , Herd , and Garroni with violating the state 's Computer Spyware Act and its Consumer Protection Act . The complaint , filed in King County Superior Court in Seattle , alleged misrepresentations and unlawful business acts and practices similar to those alleged in the FTC complaint , and further alleged violations of Washington state law .

The defendants were subject to fines of up to \$ 100 @, @ 000 per violation of the Spyware Act and \$ 2 @, @ 000 per violation of the Consumer Protection Act if found liable . They were also subject to paying restitution to affected consumers .

= = = Alleged violations of law = = =

The alleged violations of Washington state law included taking control of a user 's computer in violation of the Spyware Act and the Consumer Protection Act (CPA) , by remotely installing billing software that initiates and controls the pop @-@ up cycle , misrepresenting the ability to uninstall software in violation of the same acts , by listing the software in Add / Remove Programs although the software cannot be uninstalled , unconscionable business practices in violation of the CPA , by the " aggressive and harassing " billing method used and the failure to disclose it , including use of a billing method " that forces payment by completely obstructing users ' access to their computers " , threats , harassment and intimidation in billing practices in violation of the CPA , by threatening collection proceedings and an adverse effect on users ' credit records , while in fact defendants do not even know the consumer 's name ; and referring to consumers ' " legal obligation " to pay , when in fact there is no legally binding contract , failure to disclose material facts in violation of the CPA , the " aggressive , relentless , threatening " form of the payment demands ; the fact that the uninstallation option for the software will be disabled ; and that the defendants " transmit software to the user 's computer surreptitiously " , and misrepresentations in violation of the CPA , including stating the software contains " no spyware " when in fact the software itself constitutes spyware by its behavior .

In announcing the suit following a seven @-@ month investigation , Washington Attorney General Rob McKenna rejected one possible defense . " The defendants ' claim that users are legally obligated to pay for their service lacks merit because consumers did not provide knowing consent to the installation of the relentless pop @-@ up demands " , he said . " Furthermore , computer owners are not responsible to satisfy contracts that other people , including minors , entered into while using a computer . " He also said that the defendants ' threats of collection proceedings and adverse effects on users ' credit ratings were empty , as the defendants had no way to personally identify computer users .

Assistant Attorney General Paula Selis said the tactics forced some consumers to give in and pay between \$ 20 and \$ 100 for the service . She said , " We sued them because we were getting complaints from consumers who felt that they were being harassed and held over a barrel for payments that they didn 't agree to make . " Selis said , " It was harassment , it was intimidation of the consumer . It was using a high @-@ pressure tactic to make him or her pay for something they were not legally obligated to pay . "

= = = Settlement = = =

Movieland settled with Washington in April 2007 under terms similar to the FTC settlement but specific to Washington consumers , agreeing to pay Washington \$ 50 @, @ 000 as consumer

reimbursement and to prominently state all important contract terms , including the cost of the subscription service , in advertisements .