

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 11-23643-CV-GRAHAM

**CLOSED
CIVIL
CASE**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

FROSTWIRE LLC, *et al.*,

Defendants.

STIPULATED FINAL ORDER FOR PERMANENT INJUNCTION

Plaintiff, the Federal Trade Commission (“Plaintiff” or “Commission”), filed a Complaint for Permanent Injunction and Other Equitable Relief (“Complaint”) against the Defendants, pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b). The Commission and Defendants stipulate to the entry of this Final Order for Permanent Injunction (“Order”) to resolve all matters in dispute in this action between them. Accordingly, it is hereby ordered as follows:

FINDINGS

1. This Court has jurisdiction over the subject matter and over all of the parties. Venue is proper as to all parties in this District.
2. The Complaint states claims upon which relief may be granted against Defendants under Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).
3. The activities of Defendants are in or affecting commerce, as defined in Section 4 of the

FTC Act, 15 U.S.C. § 44.

4. Defendants waive all rights to appeal or otherwise challenge or contest the validity of this Order. Defendants also waive any claims they may have held under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action to the date of the Order.
5. Each party shall bear its own costs and attorneys' fees.
6. Defendants do not admit any allegations in the Complaint, except for facts necessary to establish jurisdiction, and as otherwise specifically stated in this Order.

DEFINITIONS

For purposes of this Order, the following definitions shall apply:

“Actions substantially equivalent to” means clicks, touches, or similar actions that are the same as, or highly similar to, and presented in the same location as, those the consumer previously took to change the software program setting; that are equal to or less in number than those previous actions; and that are explained and described to the consumer in a format and using terminology consistent with those used to explain how to make the previous change.

“Affirmatively select” means to choose by checking a box or touching a button or icon on a computer screen that is not pre-selected as the default option, or by taking a substantially similar action.

“Clear(ly) and prominent(ly)” means:

- a. In textual communications (*e.g.*, words displayed on a computer screen), the required disclosures are of a type, size, and location sufficiently noticeable for an ordinary consumer to read and comprehend them, in print that contrasts highly with the background on which they appear;

- b. In communications disseminated orally or through audible means (*e.g.*, streaming audio), the required disclosures are delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend them;
- c. In communications disseminated through video means (*e.g.*, streaming video), the required disclosures are in writing in a form consistent with subparagraph (a) of this definition and appear on the screen for a duration sufficient for an ordinary consumer to read and comprehend them, and in the same language as the predominant language that is used in the communication;
- d. In communications made through interactive media (*e.g.*, online services and software), the required disclosures are unavoidable and presented in a form consistent with subparagraph (a) of this definition, in addition to any audio or video presentation of them; and
- e. In all instances, the required disclosures are: (1) presented in an understandable language and syntax; and (2) include nothing contrary to, inconsistent with, or in mitigation of any other statements or disclosures used in any communication with the consumer.

“Computer” means any desktop or laptop computer, handheld device, telephone, smartphone, tablet, or other electronic device that has a platform on which to download, install, or run any software program, code, script, or other content.

“Corporate Defendant” means Frostwire LLC and its successors and assigns.

“Defendants” means the Corporate Defendant and Individual Defendant, individually, collectively, or in any combination.

“File-sharing application” means any software program that, when installed and running on a computer, can enable the users of other computers running the same program or a compatible program (known as “peer” computers) to search for and copy files from that computer, and includes FrostWire Desktop and FrostWire for Android.

“File-sharing network” means a computer network formed when multiple, individual peer computers running file-sharing applications communicate with each other and enable peer computers to search for and copy files from each other, including the “Gnutella” file-sharing network and any networks formed when multiple computers communicate through one or more common wireless access devices.

“FrostWire Desktop” means any version of the software program Defendants have marketed and/or distributed to the public under the name “FrostWire,” including through www.frostwire.com and www.download.com, that can be installed on computers running various versions of the Microsoft Windows operating system and other operating systems, but not including FrostWire for Android.

“FrostWire for Android” means any version of the software program Defendants have marketed and/or distributed to the public under the name “FrostWire for Android,” including through www.frostwire.com, the Android Marketplace, and www.amazon.com, that can be installed on computers running various versions of the Android mobile operating system.

“Including” means including without limitation.

“Individual Defendant” means Angel Leon.

“Legacy Version” means any version of Frostwire Desktop distributed in commerce by Defendants prior to June 10, 2011, or any version of Frostwire for Android distributed in commerce by Defendants prior to May 6, 2011.

“**Person(s)**” means a natural person, an organization, or other legal entity, including a corporation, partnership, sole proprietorship, limited liability company, association, cooperative, or any other group or combination acting as an entity.

To “**share**” files means to make files available for searching, browsing, and/or copying by third parties, including through any file-sharing network.

“**User-originated files**” means any files stored on a computer prior to installation of a file-sharing application and any files subsequently stored on that computer that a user has not downloaded by means of that file-sharing application, including any files created, downloaded, or saved through the use of any other software program on the computer, and including any files copied to a computer running FrostWire for Android from a computer running FrostWire Desktop using those two programs.

ORDER

I.

PROHIBITION ON MISREPRESENTATIONS

IT IS HEREBY ORDERED that Defendants, their officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or indirectly, in connection with the advertising, distribution, downloading, installation, or operation of any file-sharing application in commerce, are hereby permanently restrained and enjoined from misrepresenting, or assisting others in misrepresenting, expressly or by implication:

- A. that consumers’ computers will not publicly share, or are not publicly sharing, files consumers download or have downloaded from the Gnutella network, including through

the FrostWire Desktop “Save Folder and Shared Folders” dialog box and “Options-Sharing” box;

- B. what files the file-sharing application will share or the audience with whom they will be shared;
- C. how consumers can initiate or stop sharing files when they install or run the file-sharing application on a computer; or
- D. any other material fact about how the file-sharing application operates.

II.

REQUIRED DISCLOSURES AND DEFAULTS RELATING TO THE SHARING OF DOWNLOADED FILES

IT IS FURTHER ORDERED that Defendants, their officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or indirectly, are permanently restrained and enjoined from, or assisting others in, distributing, enabling the downloading or installation of, or causing to operate any file-sharing application in commerce unless:

- A. before the consumer installs or runs the application, the application:
 - 1. clearly and prominently discloses to the consumer which files downloaded from a file-sharing network, if any, it will share and the audience with whom those files will be shared;
 - 2. requires the consumer first to affirmatively select which files downloaded from the network, if any, to share;

3. clearly and prominently discloses how the consumer can stop sharing files the consumer downloads from the network; and
- B. after the application is installed and running, the application:
1. allows the consumer to disable sharing of files previously and subsequently downloaded from the network immediately upon taking actions substantially equivalent to those required to affirmatively select such files for sharing after the application is installed; and
 2. provides a clearly labeled link or distinctive icon linking from the application's listings of shared files to clear and prominent written, graphical, and audiovisual instructions about how to disable sharing of files.

III.

REQUIREMENTS RELATING TO USER-ORIGINATED FILES AND DEFAULT SETTINGS

IT IS FURTHER ORDERED that Defendants, their officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or indirectly, are permanently restrained and enjoined from, or assisting others in, distributing, enabling the downloading or installation of, or causing to operate any file-sharing application in commerce that can share user-originated files, unless any such sharing can be enabled only after the application is completely installed and set up, and the application:

- A. clearly and prominently discloses to the consumer which user-originated files, if any, the consumer can choose to share using the application, and the audience with whom those files would be shared;

- B. is set, by default, to require the consumer to affirmatively select the specific, individual files to be shared, and to confirm after clear and prominent disclosure that selected files will be shared;
- C. enables consumers to change the default settings described in Subsection III.B, above, provided that the application does not prompt the consumer to change those default settings, and only if the consumer:
 - 1. affirmatively selects an option to do so after clear and prominent disclosure about the effect of the change and confirms the change through an affirmative selection;
 - 2. must affirmatively select any groups of files to be shared;
 - 3. after making any change to a default setting described in Subsection III.B, above, can re-enable the default setting immediately upon taking actions substantially equivalent to those required to change it;
- D. allows the consumer to disable sharing of any files or groups of files immediately upon taking actions substantially equivalent to those required to select them for sharing; and
- E. provides a clearly labeled link or distinctive icon linking from the application's listings of shared files to clear and prominent written, graphical, and audiovisual instructions about how to disable sharing of files.

IV.

REQUIREMENTS REGARDING LEGACY VERSIONS

IT IS FURTHER ORDERED that Defendants, their officers, agents, servants, employees, and attorneys, and all other persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or indirectly, are permanently restrained and enjoined from promoting, selling, or

distributing, or assisting others in so doing, any Legacy Version of Frostwire Desktop or Frostwire for Android. **It is further ordered** that, within ten (10) business days of the entry of this order, Defendants shall, to the extent that they have not done so previously, transmit or cause to be transmitted:

- A. to all computers running any Legacy Version of FrostWire Desktop:
 - 1. code that, when installed, designates all “Individually shared” files on those computers not to be shared by the application unless consumers using those computers affirmatively select them to be shared, and upgrades the application to comply with the requirements of Sections I-III of this Order; and
 - 2. a clear and prominent notice to consumers using those computers that advises them to install the code described in Subsection IV.A.1 of this Order, and that includes a clearly labeled command button or link enabling consumers to initiate that installation; and

- B. to all computers running any Legacy Version of FrostWire for Android:
 - 1. code that, when installed, designates all previously shared files on those computers not to be shared by the application unless consumers using those computers affirmatively select them to be shared, and upgrades the application to comply with the requirements of Sections I-III of this Order; and
 - 2. a clear and prominent notice to consumers using those computers that advises them to install the code described in Subsection IV.B.1 of this Order, and that includes a clearly labeled command button or link enabling consumers to initiate that installation.

V.

COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring and investigating compliance with any provision of this Order:

- A. Within ten (10) days of receipt of written notice from a representative of the Commission, Defendants each shall submit additional written reports, which are true and accurate and sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and provide entry during normal business hours to any business location in each Defendant's possession or direct or indirect control to inspect the business operation;
- B. In addition, the Commission is authorized to use all other lawful means, including but not limited to:
 - 1. obtaining discovery from any person, without further leave of court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, 45 and 69;
 - 2. having its representatives pose as consumers and suppliers to Defendants, their employees, or any other entity managed or controlled in whole or in part by any Defendant, without the necessity of identification or prior notice; and
- C. Defendants each shall permit representatives of the Commission to interview any employer, consultant, independent contractor, representative, agent, or employee who has agreed to such an interview, relating in any way to any conduct subject to this Order.

The person interviewed may have counsel present.

Provided however, that nothing in this Order shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to

obtain any documentary material, tangible things, testimony, or information relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

VI.

COMPLIANCE REPORTING

IT IS FURTHER ORDERED that, in order that compliance with the provisions of this Order may be monitored:

- A. For a period of three (3) years from the date of entry of this Order,
 1. Individual Defendant shall notify the Commission of the following:
 - a. Any changes in his residence, mailing addresses, and telephone numbers, within ten (10) days of the date of such change;
 - b. Any changes in his employment status (including self-employment), and any change in his ownership in any business entity, within ten (10) days of the date of such change. Such notice shall include the name and address of each business that he is affiliated with, employed by, creates or forms, or performs services for; a detailed description of the nature of the business; and a detailed description of his duties and responsibilities in connection with the business or employment; and
 - c. Any changes in his name or use of any aliases or fictitious names within ten (10) days of the date of such change;
 2. Defendants shall notify the Commission of any changes in structure of the Corporate Defendant or any business entity that any Defendant directly or indirectly controls, or has an ownership interest in, that may affect compliance

obligations arising under this Order, including but not limited to: incorporation or other organization; a dissolution, assignment, sale, merger, or other action; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; or a change in the business name or address, at least thirty (30) days prior to such change, *provided* that, with respect to any such change in the business entity about which a Defendant learns less than thirty (30) days prior to the date such action is to take place, such Defendant shall notify the Commission as soon as is practicable after obtaining such knowledge.

B. Sixty (60) days after the date of entry of this Order, Defendants each shall provide a written report to the FTC, which is true and accurate and sworn to under penalty of perjury, setting forth in detail the manner and form in which they have complied and are complying with this Order. This report shall include, but not be limited to:

1. For Individual Defendant:
 - a. his then-current residence address, mailing addresses, and telephone numbers;
 - b. his then-current employment status (including self-employment), including the name, addresses, and telephone numbers of each business that he is affiliated with, employed by, or performs services for; a detailed description of the nature of the business; and a detailed description of his duties and responsibilities in connection with the business or employment; and
 - c. Any other changes required to be reported under Subsection A of this Section.

2. For all Defendants:
 - a. A copy of each acknowledgment of receipt of this Order, obtained pursuant to the Section titled "Distribution of Order";
 - b. Any other changes required to be reported under Subsection A of this Section.
- C. Each Defendant shall notify the Commission of the filing of a bankruptcy petition by such Defendant within fifteen (15) days of filing.
- D. For the purposes of this Order, Defendants shall, unless otherwise directed by the Commission's authorized representatives, send by overnight courier (not the U.S. Postal Service) all reports and notifications to the Commission that are required by this Order to:

Associate Director for Enforcement
Bureau of Consumer Protection
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580
RE: FTC v. Frostwire LLC

Provided that, in lieu of overnight courier, Defendants may send such reports or notifications by first-class mail, but only if Defendants contemporaneously send an electronic version of such report or notification to the Commission at DEbrief@ftc.gov.

- E. For purposes of the compliance reporting and monitoring required by this Order, the Commission is authorized to communicate directly with each Defendant.

VII.

RECORDKEEPING

IT IS FURTHER ORDERED that, for a period of six (6) years from the date of entry of

this Order, each Defendant, in connection with any business where (1) such Defendant is the majority owner, or directly or indirectly manages or controls the business, and (2) the business is engaged in or assists others engaged in the development, marketing, sale, or distribution in commerce of any file-sharing application, and their agents, employees, officers, corporations, successors and assigns, are hereby restrained and enjoined from failing to create and/or retain the following records:

- A. Accounting records that reflect revenues generated relating to the downloading, installation, or use of file-sharing applications, and the disbursement of such revenues; and, to the extent such information is obtained in the ordinary course of business, records that reflect the number of downloads and installations of file-sharing applications;
- B. Personnel records accurately reflecting: the name, address, and telephone number of each person who is employed in any capacity by such business, including as an independent contractor, and who participates in the conduct specified in Sections I-IV; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable;
- C. Complaints and refund requests (whether received directly or indirectly, such as through a third party) and any responses to those complaints or requests;
- D. All records and documents necessary to demonstrate full compliance with each provision of this Order, including but not limited to:
 - 1. copies of acknowledgments of receipt of this Order required by the Sections titled "Distribution of Order" and "Acknowledgment of Receipt of Order";
 - 2. all reports submitted to the FTC pursuant to the Section titled "Compliance Reporting"; and

3. all records and documents that contradict, qualify, or call into question Defendants' compliance with this Order; and

E. An executable copy of each materially different version of each file-sharing application that any Defendant, whether acting directly or indirectly, distributes or makes available for download, and any programmer documentation, developer guides, specification documents, version histories and change logs, application store documentation or submissions, application store descriptions and disclosures, terms of service, end user license agreements, frequently asked questions, instructional materials, privacy policies, domain name registrations, and online service agreements associated with those versions.

VIII.

DISTRIBUTION OF ORDER

IT IS FURTHER ORDERED that, for a period of three (3) years from the date of entry of this Order, Defendants shall deliver copies of the Order as directed below:

A. Corporate Defendant: The Corporate Defendant must deliver a copy of this Order to (1) all of its principals, officers, directors, and managers; (2) all of its employees, agents, and representatives who engage in conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in structure set forth in Subsection A.2 of the Section titled "Compliance Reporting." For current personnel, delivery shall be within five (5) days of service of this Order upon such Defendant. For new personnel, delivery shall occur prior to their assuming their responsibilities. For any business entity resulting from any change in structure set forth in Subsection A.2 of the Section titled "Compliance Reporting," delivery shall be at least ten (10) days prior to the change in structure.

- B. Individual Defendant as control person: For any business that Individual Defendant controls, directly or indirectly, or in which he has a majority ownership interest, he must deliver a copy of this Order to (1) all principals, officers, directors, and managers of that business; (2) all employees, agents, and representatives of that business who engage in conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in structure set forth in Subsection A.2 of the Section titled "Compliance Reporting." For current personnel, delivery shall be within five (5) days of service of this Order upon Individual Defendant. For new personnel, delivery shall occur prior to their assuming their responsibilities. For any business entity resulting from any change in structure set forth in Subsection A.2 of the Section titled "Compliance Reporting," delivery shall be at least ten (10) days prior to the change in structure.
- C. Defendants must secure a signed and dated statement acknowledging receipt of the Order, within thirty (30) days of delivery, from all persons receiving a copy of the Order pursuant to this Section.

IX.

ACKNOWLEDGMENT OF RECEIPT OF ORDER

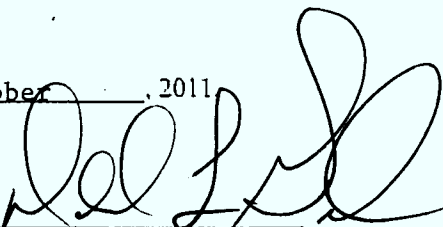
IT IS FURTHER ORDERED that each Defendant, within five (5) business days of receipt of this Order as entered by the Court, must submit to the Commission a truthful sworn statement acknowledging receipt of this Order.

X.

RETENTION OF JURISDICTION

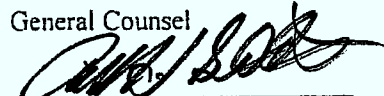
IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order. The Clerk shall **CLOSE** this case for administrative purposes only.

IT IS SO ORDERED, this 12th day of October, 2011


DONALD L. GRAHAM
UNITED STATES DISTRICT JUDGE

SO STIPULATED:

WILLARD K. TOM
General Counsel

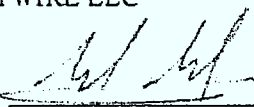


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Dated: October 7, 2011

ATTORNEYS FOR PLAINTIFF

FROSTWIRE LLC

By: 

Its: Melinger

Dated: 7/1/2011

ANGEL LEON



Dated: 7/1/2011

**APPROVED AS TO CONTENT
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