

**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA**

CHRISTOPHER STEELMAN,  
for himself and for all others similarly situated,

Plaintiffs,

vs.

DOUBLECLICK, INC.,  
a Delaware business corporation,  
and

JOHN DOES 1 - 100,

Defendants.

CIVIL DIVISION

G.D. No. 03-12899

Code: **CLASS ACTION**

**COMPLAINT IN CIVIL ACTION**

Filed on behalf of Plaintiffs

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**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY  
COMMONWEALTH OF PENNSYLVANIA**

CHRISTOPHER STEELMAN,	)	
for himself and all others similarly situated,	)	
	)	
Plaintiffs,	)	General Docket No. 03-12899
	)	
vs.	)	
	)	
DOUBLECLICK INC.,	)	<b>CLASS ACTION</b>
a Delaware business corporation,	)	
and	)	
	)	
JOHN DOES 1 - 100,	)	
	)	
Defendants.	)	

**COMPLAINT IN CIVIL ACTION - CLASS ACTION**

**Introduction**

1.



2. In a conspiratorial enterprise having no motive but to procure pecuniary gain for themselves, defendants deceptively and fraudulently commandeered millions of unwitting Internet users to the commercial websites of defendants' customers through dissemination of tens-of-millions of deceptive Internet advertising banners that impersonated computer system warnings.

3. Through use of such Fake User Interface (“FUI”) dialogs that fraudulently represented themselves as computer system error messages, defendants tricked millions of Internet users into interrupting the work they were performing to respond to the fraudulent system message, only to unexpectedly find both computer and computer user thus hijacked to commercial websites of defendants’ customers, where these customers attempted to hawk services and software.

4. Defendants’ deceptive business tactics temporarily commandeered users’ computers and computer systems, deprived users of their intended use of their computers, interfered with their use of their property, invaded the legally protected interests of users, wrongfully intruded into the consumer users’ right of association and right of privacy, and caused users to incur both costs and expenses, including injury to business and property.

6. This class action seeks to advance public welfare and to avert further injury through issuance of an order restraining defendants’ deceptive practice and through entry of a judgment for punitive and compensatory relief for harm suffered by Class members.

### **Parties**

7. Class Representative Christopher Steelman is an individual residing in Allegheny County, Pennsylvania. Christopher Steelman is a victim of defendants’ deceptive business scheme as detailed in this Complaint. Christopher Steelman is willing, able, and here seeks to serve as representative of the Class of like recipients of defendants’ fraudulent advertising banners, which Class is defined in paragraph 32 of this Complaint.

8. Defendant Doubleclick Inc. (“Doubleclick”) is a Delaware corporation having its headquarters and principal place of business in New York, New York. In the course of trade and commerce, Doubleclick disseminated advertisements and other communications through the Internet and throughout the United States, including Allegheny County, Pennsylvania.

9. Defendants John Does 1 through 100 are additional actors and/or co-conspirators of named defendants, including but not limited to, directors, officers, and employees of Doubleclick, Inc., its affiliates, parent or subsidiary corporations or of other legal entities, and third party agents of and/or principals of named defendants. With respect to all allegations in this Complaint, one or more John Doe defendants knowingly participated in, approved, cooperated in, directed, and/or had actual or constructive knowledge of all activities alleged, acted in concert with all other named and unnamed defendants pursuant to a common design with them, and/or gave substantial assistance or encouragement to other defendants in carrying out all alleged activities. One or more John Doe defendants profited through false pretense, false representation, and actual fraud, and willfully caused injury to the property interests of Class members, all within the meaning of 11 USC §523.

### **Jurisdiction and Venue**

10. This Court has personal jurisdiction over the parties in this action.

11. This Court has subject matter jurisdiction over this action.

12. Venue is proper in Allegheny County, Pennsylvania.

### **Statement of Facts**

13. Doubleclick, founded in 1996, is a leading provider of products and services used by direct marketers, Web publishers and advertisers to plan, execute and analyze marketing programs. Doubleclick engages in trade and commerce throughout the world, including Allegheny County, Pennsylvania, through various websites, including doubleclick.net. Doubleclick.net, itself, is a platform for paid commercial advertising of yet other entities, typically clients of Doubleclick.

14. An entity maintaining a website may, as an aspect of its site and typically in exchange for other consideration, permit the displaying on its website of commercial advertising banners issued by or on behalf of third parties. An advertising “banner” is a rectangular-shaped image, which appears within a web page, whose content typically solicits the Internet user to visit yet another website, where some product or service is offered for sale. The particular advertising banner that happens to display each time an Internet user visits a website permitting such banners is a function of the service that supplies banners for display at that site.

15. Banner advertisements whose commercial intent is apparent can be, and typically are, simply ignored by computer users and their appearance does not otherwise interfere with the tasks being performed by the computer users. In the event a user desires to respond to an advertising banner, the Internet user may “click” on any portion of the banner

and the user's Internet browser is typically re-directed to the web page to which the banner is linked.

16. Site visitations prompted by such banners are the lifeblood of such advertising banners since frequency of site hits increase the premium the website can charge potential advertisers for use of that website, in the same manner that increased newspaper circulation may increase the premium a newspaper can charge its advertising customers. Additionally, increased site visitations increase the prospects of sale of the host's own products advertised on that site due to increased traffic.


17. Doubleclick uses DART (Dynamic, Advertising, Reporting and Targeting) ad management technology as the platform for many of the products and services offered to customers of Doubleclick. The DART ad management technology is a sophisticated targeting, reporting and delivery tool, relied upon by customers of Doubleclick to measure campaign performance and provide dynamic ad space inventory management.

18. Doubleclick advertises that its DART ad management technology is protected by U.S. Patent No. 5,948,061. As stated in this patent,

[w]hen ... a user using a web browser accesses a web page that is affiliated with the advertising server process, the affiliated page's encoding includes an embedded reference to an object provided by the advertising server process. That causes the user's browser to contact the advertising server process to provide the advertising image or information that will appear on the accessed web page as displayed by the user's browser. Using the address information and/or other information passed by the browser for the user, including the page being accessed by the user, the advertising server process determines an appropriate advertisement to select for the particular user."

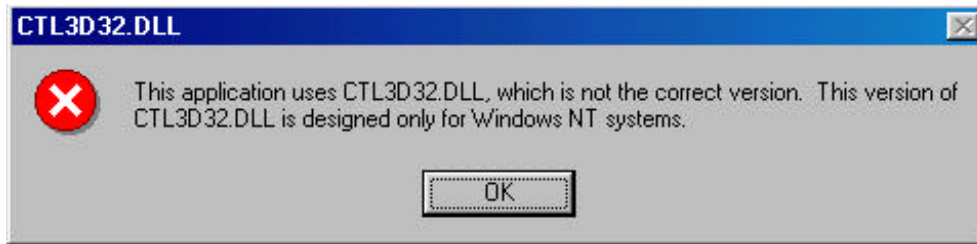
Upon information and belief, Doubleclick thus controls the advertising server process on which advertisements for its clients are located, the selection of the advertisement to be served, and the delivery of the advertisement to the user's browser.

19. In a diabolical scheme to deceive computer users into misdirecting their computers to Internet sites of defendant's clients, thus disrupting the work the user was otherwise performing, defendants devised and disseminated deceptive advertising banners that gave the appearance of being system warnings or computer alerts being issued by the user's own computer, and enticing the computer user to appropriately respond to the imposter alert or warning.

20. A computer operating system alert or error message is a "dialog box" having a distinctive form and content familiar to any computer user. Such dialog boxes associated with the world's most widely used operating system, manufactured by Microsoft, and software designed to operate on that system, appear on the user's computer screen as a gray rectangle box sporting a blue header bar. The error message or warning message describing the computer's current problem is contained within the gray box. The blue header bar contains "User Interfaces," typically small boxes, each of which perform some function familiar to all computer users. These user interface boxes include the familiar "✕", permitting the computer user to close the warning or error message, and boxes associated with expanding or minimizing the dialog window itself: 

21. The system warning or error message may also contain a user interface button in the message itself, reading “OK,” which permits the computer user to acknowledge receipt of the error message, close the system alert dialog box, and continue working.

22. An example of a legitimate system warning dialog box is:



23. A true system or software alert or warning dialog box containing various appropriate User Interfaces serves the important purpose of notifying the computer user of a sudden and unexpected system performance problem then being experienced by the user’s computer. Because of the message’s importance and urgency, the system alert or warning interrupts the user and remains superimposed over the user’s computer screen until the user responds to the message by clicking the appropriate user interface box.

24. Defendants deceived computer users into responding to advertising banners and “visiting” websites by issuing advertising banners that fraudulently portrayed themselves as system alerts or warning Dialog Boxes, disguising that they were, in fact, advertising banners, thus falsely mimicking a computer system or software alert or warning and fraudulently giving the appearance of containing User Interface boxes that would perform functions familiar to the computer user.

25. In fact, the apparent computer warning, alert, or error dialog box was a commercial advertisement being sent through the Internet; the apparent User Interface boxes did not perform the tasks represented, and indeed, were not User Interfaces at all. Clicking on any apparent interface box, or indeed on any portion of the apparent system alert, had the effect of disrupting the computer user's work and unexpectedly transporting the user to defendants' commercial website.

26. In fact, the only way to escape being commandeered to commercial website of defendants' clients was for the computer user to do precisely what habit, experience, and training had taught the computer user not to do: ignore the alert, warning, or error message.

27. The enormity of defendants' ongoing deceptive advertising banner campaign is reflected in the fact that, in 2002, defendants served more than 630 billion ads for thousands of clients. The revenue generated by defendants in 2002, including revenue derived from their deceptive advertising banners, was in excess of \$300 million.

28. The magnitude of defendants' deceptive Internet practice is such that it unreasonably interferes with the right of the public in its use of the Internet and its convenience.

29. As a proximate result of defendants' intentionally wrongful conduct, millions of Internet users and the public in general have suffered, and continue to suffer, injury to their legally protected interests, which injury includes, but is not limited to, injury to business and

property, interference with use, exclusive use, and enjoyment of personalty, nuisance, annoyance, and invasions of rights of association, non-association, and privacy.

30. Defendants' ongoing deception should be stopped and victims compensated.

### **Class Action Allegations**

32. The class consists of all persons residing in the United States who have, while operating a computer, encountered an advertising banner issued by defendants having a style substantially in the form attached as Exhibit "A" to this Complaint. Excluded from the Class are defendants, its affiliates (including parents, subsidiaries, predecessors, successors, and any other entity or its affiliate which has a controlling interest), their current, former, and future employees, officers, directors, partners, members, indemnities, agents, attorneys and employees and its and their assigns and successors.

33. The members of the Class are so numerous that their joinder is impracticable. Class members number in the tens of millions. Further, the monetary value of Class members' claims are such that individual Class members, as a practical matter, cannot seek redress on an individual basis. Collective adjudication of claims represents the most efficient, and indeed, only viable means of seeking judicial redress against defendants.

34. Prosecution of separate actions by Class members, further, would risk inconsistent or varying adjudications, which would establish incompatible standards of conduct for the defendants.

35. Adjudications by individual members of the Class would, as a practical matter, be potentially dispositive of the interests of other members of the Class and substantially impair or impede their ability to protect their interests. Class-wide adjudication of these claims, therefore, is appropriate.

36. Defendants have acted on grounds generally applicable to the Class, thereby making appropriate final injunctive relief and/or declaratory relief with respect to the Class as a whole, rendering class-wide adjudication of these claims appropriate.

37. Defendants have engaged in a uniform and common course of business misconduct toward members of the Class, giving rise to core disputed questions of law and questions of fact central to the claims of all Class members, rendering this matter appropriate for collective adjudication of Class member's claims.

38. Class members have a shared and well-defined community of interests in the questions of law and fact that affect each member of the Class. Core disputed questions of law and fact common to all members of the Class predominate over questions solely affecting individual Class members. Illustrative common questions of law and fact include, but are not limited to each of the following:

(a) Whether and which named and presently unnamed defendants carry out deceptive business acts described in this Complaint.

(b) Whether defendants' advertising banners constitute an unfair or deceptive act or practice.

- (c) Whether the subject advertising banners have a capacity to deceive a substantial portion of the public.
- (d) Whether defendants' deception of Class members was accompanied by an intent to deceive.
- (e) Whether this Court should enjoin defendants from further dissemination of advertising banners disguised as computer system alerts.
- (f) Whether defendants' deception of Class members constitutes intermeddling with or dispossession of property for purposes of the tort of Trespass to Chattel.
- (g) Whether depicting an advertising banner as a system alert or warning having operative User Interfaces constitutes a false representation of existing fact.
- (h) Whether and which named and presently unnamed defendants, including officers and board members of Bonzi, participated in, approved, directed, or ratified the deceptive business practices alleged in this Complaint.
- (i) Whether defendants' deceptive practices proximately caused legally cognizable harm.
- (j) Whether defendants have been unjustly enriched by their misconduct, warranting disgorgement of profits from defendants.

39. The claims of the named plaintiff arise from the same events and courses of conduct that give rise to the claims of other Class members. Plaintiff is a member of the Class and possesses the same legal interests and has suffered the same injury as other Class members. Plaintiff's claims are typical of the claims of the Class generally.

40. Plaintiff will fairly and adequately represent and protect the interests of the Class.

41. Absent class-wide adjudication, members of the Class are without effective recourse. Because of the relatively small monetary value of each individual Class member's claim, few, if any, Class members could afford to prosecute an individual action against any defendant. Absent class treatment, defendants' wrongdoing will go unabated, the ranks of Class members will continue to swell, and no Class member will be afforded opportunity to seek judicial relief, whether for themselves, or for the public good generally.

### **Claims**

42. Plaintiff hereby alleges each and every cause of action and remedy at law or in equity supported by the facts alleged in this Complaint. For purposes of illustration only, those causes of action and remedies at law or in equity include the following.

(Deceptive Business Practices)

43. Defendants knowingly and with intent to induce consumers' reliance made false, unfair, deceptive, and misleading representations of fact in the form of advertising banners disguised as computer alerts or system warnings.

44. Defendants' deceptive business practice had a capacity to mislead and did, in fact, mislead a substantial portion of the public, including named plaintiff and members of the Class.

45. Defendants' deceptive business practices impact the public interest.

46. Defendants' unfair and deceptive acts and practice, made in trade and commerce, proximately caused injury to plaintiff and members of the Class in their business and property.

(Fraud/Intentional Misrepresentation)

47. Defendants knowingly and intentionally made false statements of existing material facts.

48. Defendants intended for Class members to rely on their material misrepresentations of fact.

49. Class members reasonably and justifiably relied on defendants' material misrepresentations, unaware of the falsity of defendants' representations, and had a right to rely on those representations.

50. Class members suffered damages as a result of relying on defendants' material misrepresentations of fact.

(Nuisance)

51. Defendants unreasonably interfered with Class members' use and enjoyment of their property through a pattern and practice of deceptive advertising banners that caused Class members to unknowing divert their time, attention, work, and computer hardware to the purpose of broadcasting defendants' website.

52. Defendants wrongful conduct proximately caused injury to the legally protected interests of Class members.

(Public and Private Nuisance)

53. Defendants unreasonably interfered with the right, common to the public, of use of the Internet and significantly interfered with the public convenience in that use.

54. Defendants' wrongful conduct is continuing in nature.

55. Named plaintiff has standing to sue as a representative of the general public and as a member of a class in a class action.

56. Plaintiff and members of the Class have suffered harm proximately caused by defendants' unreasonable interference with this public right.

57. This Court should abate defendants' wrongdoing and enjoin defendants from further unreasonable interference with the public's right, and enter a judgment for compensatory damages for injury suffered.

(Trespass to Chattel)

58. Defendants intentionally and unreasonably interfered with Class members' use, exclusive use, and enjoyment of their personalty, proximately causing injury to the legally protected interests of Class members.

59. Defendants intentionally invaded Class members' reasonable and legitimate interest in their property, proximately causing injury to plaintiffs and members of the Class.

60. Defendants intentionally used and substantially intermeddled with chattel in the possession of Class members, proximately causing injury to the legally protected interests of Class members.

(Invasion of Privacy and Right of Association)

61. Defendants intentionally and wrongfully intruded upon Class members' solitude, seclusion, and private affairs. Plaintiffs and Class members had a legitimate and

reasonable expectation of privacy and right of association and non-association in connection with their use of their computers and use of the Internet.

62. Defendants' intrusion upon plaintiff's privacy and right of association is highly offensive to the reasonable person and proximately caused injury to plaintiff and members of the Class.

(Equitable Relief)

63. Class members have no complete, speedy, and adequate remedy at law with respect to the continuing fraud and misrepresentation perpetrated by defendants' continuing deceptive marketing and advertising practices. Class members and the general public will suffer continuing, immediate, and irreparable injury absent injunctive and equitable relief by this Court.

### **Prayer For Relief**

WHEREFORE, plaintiff, on his own behalf and on behalf of the Class, requests that this Court grant the following relief, all in an amount in excess of the \$25,000, arbitration jurisdictional limits in Allegheny County:

1. That this Court certify the proposed Class, or such other Class or subclasses as the Court deems advisable, appoint named plaintiff as representative of the Class, appoint plaintiff's counsel as Class counsel, and provide for appropriate notice to the Class;

2. That this Court enter a final order enjoining defendants from issuing, directly or indirectly, Internet advertising banners disguised as computer alerts or warnings containing User Interfaces;

3. That this Court award punitive damages against defendants, jointly and severally, in the amount of \$500.00 per Class member, or such other amount as the Court deems appropriate, in order to punish defendants for their conduct and deter like conduct by others;

4. That this Court award compensatory damages, jointly and severally, in the amount of \$5.00 per deceptive advertising banner issued by defendants, or such other amount as the Court deems appropriate;

5. That this Court award such other compensatory damages as is supported by the evidence adduced at trial;

6. That this Court award plaintiff's attorneys' fees and costs of suit as provided by applicable law; and

7. That this Court grant such other relief as may be deemed just and equitable, including disgorgement of profits or financial gain resulting from defendants' wrongful conduct.

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Attorneys for the Plaintiffs



**VERIFICATION**

I, Christopher Steelman, have read the foregoing Complaint in Civil Action - Class Action. The statements herein are correct to the best of my personal knowledge, information and belief.

This statement and verification is made subject to the penalties of 18 Pa. C.S. Section 4904 relating to unsworn falsification to authorities, which provides that if I make knowingly false averments, I may be subject to criminal penalties.

Date: 07/10/03

/s/ Christopher Steelman  
Christopher Steelman