

STATE OF NORTH DAKOTA  
MORTON COUNTY

IN DISTRICT COURT  
SOUTH CENTRAL JUDICIAL DISTRICT  
CASE NO. 04-

John J. Gosbee, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 Rob Martinson, a/k/a Robert )  
 )  
 Martinson; John and Mary )  
 )  
 Does 001 through 100; )  
 )  
 Eskrawl, Inc.; Mailwiper, )  
 )  
 Inc.; Spy Deleter, Inc.; and )  
 )  
 Doe & Doe, Inc. 101-200, )  
 )  
 Defendants )

**COMPLAINT**

As a claim for relief, the Plaintiff, John J. Gosbee (Gosbee), states the paragraphs that follow. Each paragraph relates to all other paragraphs of the complaint without necessity of repetition.

**I. PARTIES**

1. Gosbee is the owner of more than one computer, to which access has been gained without his permission, and as a result of which he has been prevented the use of the services of his computer, including computer time, as those terms are defined in NDCC §§12.1-06-01(3) and 12.1-

06-08.

2. Rob Martinson (Martinson) is an individual believed to reside at 905 Roberts Landing Cove, Atlanta, GA 30350-6238. He is a "racketeer" as that term is defined in North Dakota's Racketeer Influenced and Corrupt Organization Act (RICO), NDCC Ch. 12.1-06.1.
3. John and Mary Does 001 through 100 are as yet unidentified individuals and fellow racketeers associated with Martinson and responsible, along with him, for the criminal acts described in this Complaint.
4. Eskrawl, Inc. (Eskrawl), Mailwiper, Inc. (Mailwiper), and Spy Deleter, Inc. (Spy Deleter) are Georgia corporations for which Martinson is the registered agent and they are probably under the effective control of Martinson or one or more of his fellow racketeers.

## **II. BACKGROUND FACTS.**

5. In early March 2004, control of Gosbee's computers was intermittently seized by a program which performed at least the following actions, none of which was authorized by Gosbee:
  - a. Generated pop-up ads for a "Spy-Wiper" program. A

"pop-up ad" is an advertisement which appears in an Internet browser screen. Typically it comes to the forefront of the computer screen, disabling either temporarily or indefinitely the screen previously being used. Occasionally a pop-up ad can overload the computer and cause it to "freeze." In that case, all unsaved information is lost.

- b. Opened each CD tray on the computer and sometimes closed each tray, all without any input from the user.
- c. Played an audio file, referred to in Windows as the "trouble tone," which typically is a high-pitched voice saying, "oh-oh."
- d. In a process known as "home-page hijacking," changed the homepage in Internet Explorer to "default-homepage-network.com/index2.html" or something similar. A "homepage" is the page selected by the user to appear each time the user starts the Internet Explorer program. The cited homepage contains various ads for the "Spy Wiper" program. One ad states (emphasis in source):

"FINAL WARNING!!

"If your cd-rom drive(s) open ...

"You DESPERATELY NEED to rid your system of spyware pop-ups IMMEDIATELY!

"Dangerous computer programs can control your computer hardware if you fail to protect your computer right at this moment!

"Download Spy Wiper NOW!"

6. Copies of some of the ads described in ¶5 are attached as Exhibits JG-01 and JG-02. A virus warning triggered by the ads is attached as Exhibit JG-03.
7. With some investigation, Gosbee was able to determine the source of the ads, and that they are apparently the result of a "Trojan" program created by Martinson and one or more of his fellow racketeers. A "Trojan" program is so named after the Trojan horse of ancient Greek history. It infects the victim's computer, often under the guise of a benign purpose, and typically without the victim's knowledge or knowing consent.
8. Inflicting the Spy Wiper Trojan ads on Gosbee's computer is "computer fraud" as that term is defined in NDCC §12.1-06.1-08(1). Specifically, the racketeers gained access to Gosbee's computers, they altered, damaged,

modified, and took possession of those computers, without Gosbee's permission. The racketeers did so as part of a scheme to prevent the authorized use of services or property controlled by Gosbee, including at least computer time. This was done by false or fraudulent pretenses, representations, or promises, in that the "Spy Wiper" program does not do what racketeers claim it will do.

### **III. RICO Elements.**

9. Computer fraud is a Class C felony under NDCC §12.1-06.1-08(3). A class C felony is punishable by up to five years' imprisonment under NDCC §12.1-32-01(4). Fraud is an act of racketeering under NDCC §12.1-06.1-02(f)(15). Further the actions complained of were the assertion of false claims (namely that the Spy Wiper program would do any good), and thus an act of racketeering under NDCC §12.1-06.1-02(f)(14). There is probable cause to believe that the racketeers committed the criminal acts described.
10. The criminal acts were committed multitudes of times. As of this writing, Gosbee's computers have been attacked at

least 5 separate times. Further, there are numerous web pages discussing these Spy Wiper Trojans and the schemes of Martinson and his fellow racketeers. It is reasonable to infer that literally millions of occurrences of these acts have occurred, thus amounting to a pattern of racketeering activity.

11. Martinson and the other racketeers control an enterprise that also has legitimate non-criminal purposes.

12. Martinson and the other racketeers use the pattern of racketeering activity to fund their other business enterprises.

13. There is a pattern of continued racketeering activities. So far, Gosbee's research has disclosed incidents occurring as early as March 2003. As evidence of pervasiveness of the "Spy Wiper" Trojan scam, a recent search on Google for "spy wiper" produced 818 hits. It is reasonable to infer that literally millions of crimes of "computer fraud" have been committed by the racketeers.

THEREFORE, Gosbee asks that the Court award him the relief specified in the paragraphs that follow.

14. Certification of a class action on behalf of all victims of the Spy Wiper Trojan.
15. Damages, triple damages, and attorney fees under RICO.
16. An order divesting Martinson and all other individual racketeers from any ownership in any enterprise that at any time benefitted from the use of the Spy Wiper Trojan or similar programs.
17. An order requiring Martinson and all other individual racketeers from designing, using, or propagating any computer program similar to the Spy Wiper Trojan.
17. On all issues so triable, trial by a jury of at least 9 persons.
18. Such other relief to which he shows he is entitled.

Dated March 8, 2004.

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John J. Gosbee, Plaintiff

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File Edit View Favorites Tools Help

Back Forward Stop Refresh Home Search Favorites Media Print Mail News RSS Feeds Y! Norton AntiVirus

Address http://default-homepage-network.com/index2.html Go Links >>

**-- Web Page Dialog**

**FINAL WARNING!!**

**If your cd-rom drive(s) open...**

**You DESPERATELY NEED to rid your system of spyware pop-ups IMMEDIATELY!**

**Dangerous computer programs can control your computer hardware if you fail to protect your computer right at this moment!**

**Download Spy Wiper NOW!**

http://default-homepage-network.com/spypop4 Internet

EXH. JG-01



# REMOVE SPYWARE POPUPS FOREVER!



Powerful. Easy to use.

## Did You Know?

If you are like most people on the Net, you've most likely downloaded music on the Net. Did you know that when you use these **file sharing services**, they infect your computer with **Spy Ware or Ad Ware**? Did you know that by simply closing a pop-up ad, **your computer may have been infected with Spy Ware**?

## What Spy Wiper Does:

- ⊕ Kills every different kind of Spyware and AdWare program.
- ⊕ Blocks ads when using Kazaa, Morpheus, and Gator, or Chat programs like ICQ, MSN, AIM, or Trillian.
- ⊕ Blocks unwanted popup ads. Allows the ones you want.

Exh. JG-02



# REMOVE SPYWARE POPUPS FOREVER!

**Norton AntiVirus**

## Virus Alert

 Norton AntiVirus has detected a virus on your computer.

Object Name: C:\Documents and Settings\John\Local...\ScriptBodyJsp[1].htm  
 Virus Name: [Download.Trojan](#)  
 Action Taken: Unable to repair this file.

OK

- What Spy Wiper Does:**
- ⊕ Kills every different kind of Spyware and AdWare program.
  - ⊕ Blocks ads when using Kazaa, Morpheus, and Gator, or Chat programs like ICQ, MSN, AIM, or Trillian.
  - ⊕ Blocks unwanted popup ads. Allows the ones you want.

Exh. JG-03