

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

OFFICE DEPOT, INC., a corporation, and

SUPPORT.COM, INC., a corporation,

Defendants.

Case No. 9:19-cv-80431

**COMPLAINT FOR PERMANENT
INJUNCTION AND OTHER
EQUITABLE RELIEF**

Plaintiff, the Federal Trade Commission (“FTC”), for its Complaint alleges:

1. The FTC brings this action under Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), to obtain permanent injunctive relief, rescission or reformation of contracts, restitution, the refund of monies paid, disgorgement of ill-gotten monies, and other equitable relief for Defendants’ acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

SUMMARY OF THE CASE

2. From at least 2009 to November 2016, Office Depot, Inc. (“Office Depot”), its subsidiary OfficeMax, Inc. (“OfficeMax”) (collectively, “Office Depot Companies”), and its tech-support services vendor throughout this time period, Support.com, Inc. (“Support.com”), made misrepresentations to consumers regarding the security of their computers. Support.com provided the Office Depot Companies with the “PC Health Check Program,” a software program designed as a sales tool to convince consumers to purchase diagnostic and repair services. Defendants advertised the PC Health Check Program to consumers as a free service that

purportedly diagnosed consumers' computers for security problems and performance issues, including scanning the computer for viruses.

3. In numerous instances throughout this time period, Defendants used the PC Health Check Program to report to Office Depot Companies customers that the scan had found or identified "Malware Symptoms" when it had not done so. Additionally, in numerous instances, the PC Health Check Program falsely reported to consumers that the program had found "infections" on the consumer's computer.

4. Contrary to these representations, the PC Health Check Program did not and, by design, could not "find" or "identify" anything to return these results. Rather, Support.com programmed the PC Health Check so that whenever an Office Depot Company employee checked any one of four checkboxes (relating to generic computer concerns, such as pop-ups, slowness, crashes, or virus warnings) that appeared at the beginning of the program before the scan started (the "Initial Checkbox Statements"), the PC Health Check Program automatically reported in the PC Support Agent Report (the "Detailed Report," a copy of which is attached as **Exhibit A**) the detection of malware symptoms and, for a time, "infections." Despite the statements in the PC Health Check Program's Detailed Report that the scan "found infections" or "found" or "identified" malware symptoms, the PC Health Check Program's detection of malware symptoms was entirely dependent on whether any of the Initial Checkbox Statements was checked and not on the actual state of the computer. Nothing in the PC Health Check Program or in the Office Depot Companies employee's interaction with the customer informed consumers that this predetermined result was simply the result of checking a box.

5. Support.com provided and the Office Depot Companies used the PC Health Check Program at Office Depot and OfficeMax retail locations to sell computer repair or technical services to consumers. Based on the deceptive representations made by Defendants through the PC Health Check Program, consumers purchased computer diagnostic and repair services that could cost more than \$300 per service.

6. Defendants bilked unsuspecting consumers out of tens of millions of dollars from their use of the PC Health Check Program to sell costly diagnostic and repair services.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345 and 15 U.S.C. §§ 45(a) and 53(b).

8. Venue is proper in this district under 28 U.S.C. § 1391(b)(2), (c)(2), and (d) and 15 U.S.C. § 53(b).

PLAINTIFF

9. The FTC is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41–58. The FTC enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce.

10. The FTC is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act and to secure such equitable relief as may be appropriate in each case, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies. 15 U.S.C. §§ 53(b), 56(a)(2)(A).

DEFENDANTS

11. Office Depot is a Delaware corporation with its principal place of business at 6600 North Military Trail, Boca Raton, Florida. Office Depot is a nationwide retailer that operates over a thousand stores selling office supplies and furniture, as well as offering print services and technical support services. In November 2013, Office Depot merged with OfficeMax. The combined company operates as Office Depot but also continues to operate retail locations under both the Office Depot and OfficeMax store banners. Office Depot, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

12. Support.com is a Delaware corporation with its principal place of business at 1200 Crossman Avenue, Suite 210, Sunnyvale, California. Support.com provides cloud-based software and technical support services directly to consumers through its website, as well as technology support services indirectly to consumers through Support.com clients, including office supply retailers. Support.com, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

COMMERCE

13. At all times material to this Complaint, Defendants have maintained substantial courses of trade in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS’ BUSINESS ACTIVITIES

Overview

14. In July 2007, Office Depot and Support.com entered into an agreement whereby Support.com would provide computer repair and technical services to Office Depot customers.

Pursuant to this agreement, Office Depot sold computer tune-up, diagnostic, and repair services at Office Depot stores that it branded as Office Depot services but were fulfilled by Support.com employees. Those employees remotely accessed consumers' computers that had been brought into Office Depot stores. Office Depot and Support.com divided the proceeds from the sale of each tech-support service that Support.com fulfilled for Office Depot customers.

15. Under this agreement, from approximately July 2007 to November 2016, Support.com licensed, made available, and distributed to Office Depot a software program variously known as PC Health Check, PC Tune-up, PC Support Agent, and PC Checkup (the "PC Health Check Program") in order to facilitate the sale of computer repair services to Office Depot retail customers.

16. Defendants configured the PC Health Check Program to recommend to consumers specific services sold by Office Depot and fulfilled by Support.com. Support.com provided the PC Health Check Program to Office Depot for use at its stores to further their shared goal of increasing sales of tech-support services.

17. To assuage Office Depot's concerns about the length of time the PC Health Check Program ran, Support.com presented it to Office Depot as one of its "conversion tools that simplify sales process for associates and expand program reach" and a "recommendation map designed to maximize return on in-store traffic." Support.com informed Office Depot that this software program runs in only a few minutes using "heuristic questions to identify likely malware infestations."

18. With this understanding of the PC Health Check Program, Office Depot instructed its store employees to use the PC Health Check Program to sell tech-support services offered in the Office Depot stores and performed remotely by Support.com technicians.

19. OfficeMax entered into a similar agreement with Support.com in 2009 and, by 2011, began using the PC Health Check Program in a similar fashion in its stores.

20. After Office Depot and OfficeMax merged in or around November 2013, Defendants continued to use the PC Health Check Program under the Office Depot and OfficeMax store banners until November 2016.

The Office Depot Companies Lured Consumers Into Stores with Promises of a “Free PC Tune-up”

21. To promote the PC Health Check Program offered in its stores, the Office Depot Companies used various marketing and advertising methods, including radio commercials, print and online ads, promotions, and promotional cards. The Office Depot Companies crafted these marketing and advertising materials to entice consumers to bring their computers into stores so that an Office Depot Company employee could install and run the PC Health Check Program on the consumer’s computer.

22. The Office Depot Companies marketed the PC Health Check Program as a “free PC tune-up,” a “free PC check up,” and, at times, as a free “professional tune-up.” In numerous instances, the Office Depot Companies claimed that the value of the free PC tune-up service was \$19.99, \$29.99, or even \$60, but offered the service to consumers for free.

23. The Office Depot Companies told consumers that a store “tech expert” would “run complete diagnostics” on the computer and the PC Health Check Program would

“optimize” the computer. As described below, the PC Health Check Program did not run complete diagnostics on consumers’ computers.

24. In addition to commercial advertisements such as radio and print ads, the Office Depot Companies created the “PCHC card,” a card for Office Depot Companies store employees to hand out to consumers in its stores. One typical iteration of the PCHC card advertised: “We fix computers. Come in today for your FREE PC tune-up. Improve overall system performance. Security Assessment. Scans the system for viruses.”

25. The Office Depot Companies trained store employees to ask consumers, “When was the last time you had a professional tune up done on your PC?” The Office Depot Companies also trained store employees to tell consumers that the PC Health Check Program will make their PC run faster and check for viruses and to schedule the consumer for an appointment to return to the store with his or her computer for the free PC tune up. The Office Depot Companies instructed its employees to offer to run the PC Health Check Program on every computer that a consumer brought into a store.

26. Support.com also provided input on the content of the PCHC cards and provided training to retail employees of the Office Depot Companies on how to engage and promote the PC Health Check Program to consumers when handing out the PCHC cards at the stores.

27. The PC Health Check Program became an important part of the Office Depot Companies’ tech services sales strategy and was responsible for a substantial share of its tech service revenues.

Overview of the Office Depot Companies' Use of the PC Health Check Program

28. When the consumer brought a computer into an Office Depot or OfficeMax store for the "free PC tune-up," the Office Depot Companies' store employees would install and run the most recent version of the PC Health Check Program on the consumer's computer.

29. Support.com made accessible the most recent version of the PC Health Check Program on a webpage or web portal created and maintained specifically for the Office Depot Companies' store employees.

30. Defendants actively tracked the number of times Office Depot and OfficeMax store employees utilized the PC Health Check Program. At the request of the Office Depot Companies, Support.com captured this data whenever Office Depot Companies store employees ran the PC Health Check Program and downloaded the software from the web portal. Support.com supplied this information to the Office Depot Companies in various reports.

31. The Office Depot Companies used the information and data from these reports to monitor and comparatively assess stores' performance based in part on their usage of the PC Health Check Program.

32. The PC Health Check Program was composed of a number of components, including, *inter alia*, a pre-scan questionnaire page containing four questions with corresponding checkboxes, a brief system scan (including a "Quick Malware Scan"), a Detailed Report, and a service recommendation. Later versions of the PC Health Check Program also included limited optimizations that took place between the brief system scan and the Detailed Report, such as removing junk files and reconfiguring certain settings.

33. However, the results of the Quick Malware Scan were unrelated to the results returned when one of the Initial Checkbox Statements was selected. That is, even if the Quick Malware Scan found no evidence of malware or a virus, such a finding would not change the poor “security status” result and finding of “malware symptoms” or “infections” that was automatically returned whenever one of the Initial Checkbox Statements was selected.

34. Once the PC Health Check Program was installed and opened on a consumer’s computer, the program displayed the question “Does your computer have any of the problems below?” followed by the Initial Checkbox Statements. While the PC Health Check Program page containing the Initial Checkbox Statements changed in appearance from 2009 to 2016, the wording of the Initial Checkbox Statements remained the same. The Initial Checkbox Statements, as illustrated in Figure 1 below, read: (i) “Frequent pop-ups or other problems prevent me from browsing the internet,” (ii) “My PC recently became much slower or is too slow to use,” (iii) “I am often warned of a virus infection or I am asked to pay for virus removal,” and (iv) “My PC frequently crashes.”

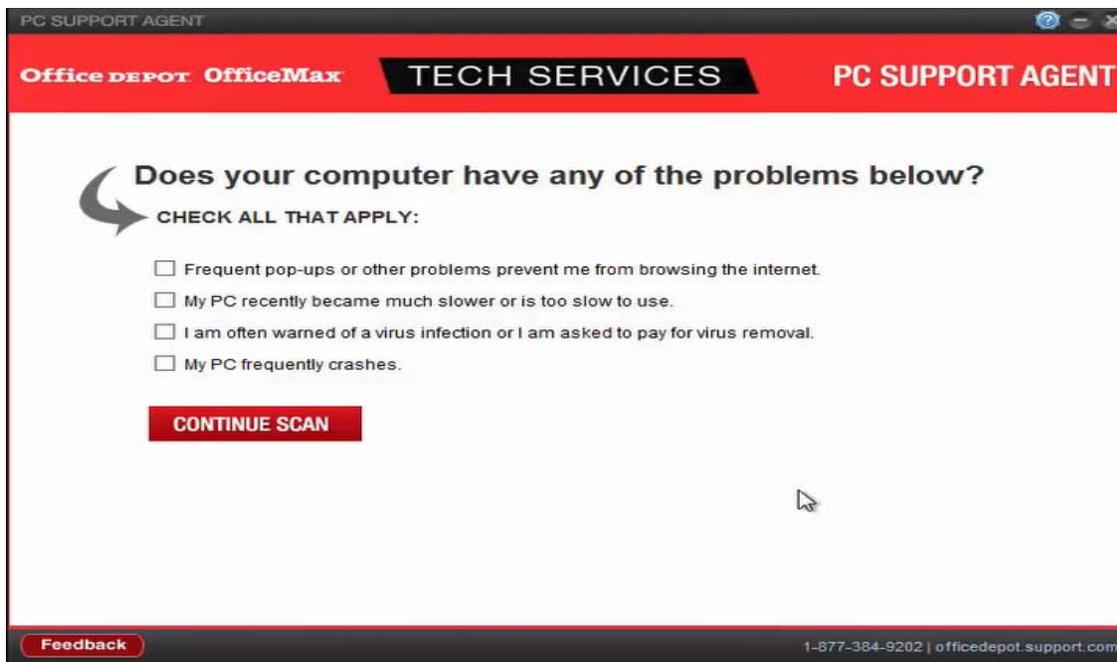


Figure 1: PC Health Check Program initial screen (2016 in-store version)

35. Defendants trained Office Depot and OfficeMax store employees on how to utilize the PC Health Check Program and instructed store employees to check any of the Initial Checkbox Statements that applied based on the consumer's responses. Consistent with their training, Office Depot and OfficeMax store employees read each of the Initial Checkbox Statements once the program began and selected the corresponding box based on the consumer's response. If the consumer indicated that she had not experienced any of the issues, the store employee could proceed to the scan portion of the PC Health Check Program with none of the boxes checked.

36. Consistent with corporate policy, the Office Depot Companies required store employees to run the PC Health Check Program in front of the consumer. Once the store employee initiated the scan, the PC Health Check Program displayed a screen listing four categories starting with, as shown in Figure 2 below, performance (represented by a gauge icon),

security (represented by a shield icon), data (represented by a meter icon), and system (represented by a gear icon).



Figure 2: PC Health Check Program scanning screen (2016 in-store version)

37. Defendants configured and customized the PC Health Check Program to briefly scan specific parts of the computer, conduct certain checks of the performance, security, data, and system, and assign a “status” to each of these categories. Support.com customized PC Health Check Program pursuant to the general specifications required by the Office Depot Companies. The Office Depot Companies thereafter reviewed and approved upgrades or modifications to the design or configuration of the PC Health Check Program before it was made available to the Office Depot and OfficeMax stores.

38. The PC Health Check Program displayed a progress bar under each category reflecting the progress of the scan and checks for that category. After completing the scan, the

PC Health Check Program listed on a scan results screen the status of each category as “poor,” “fair,” or “good” (as shown in Figure 3 below).

39. In addition to displaying the terms “poor,” “fair,” or “good,” the status of each category was also reflected through the use of colors and either a checkmark or an “X.” A status of “poor” resulted in a red “X” with the word “poor” also rendered in red, a “fair” status resulted in a yellow checkmark with the word “fair” rendered in yellow, and a status of “good” resulted in a green checkmark with the word “good” rendered in green. Additionally, the icons representing each category were shaded with the color corresponding to the status. For example, the PC Health Check Program displayed the shield representing “security” in red if the security status was “poor” or green if it was “good.”



Figure 3: PC Health Check Program initial scan results screen (2016 in-store version)

40. Displayed under each category’s status was a link titled “more details.” Clicking on this link pulled up the “Detailed Report” listing the results of the scan and various checks run

by the PC Health Check Program for each category. The Detailed Report again displayed the automated “results” of the Initial Checkbox Statements and the Quick Malware Scan. The Office Depot Companies required its store employees to review with the consumer the scan results generated in the Detailed Report.

41. In addition to the “more details” link, the PC Health Check Program displayed a button labeled “Repair & Recommend” in the upper right corner of the screen (as shown in Figure 3 above). Clicking on this button initiated a number of limited optimizations that Defendants claimed would improve the performance category of the computer. These optimizations, however, had no effect on the security category.

42. After this process, the PC Health Check Program displayed a final scan results page that reflected the changed status of one or more non-security categories (such as “Performance” as shown in Figure 4 below).

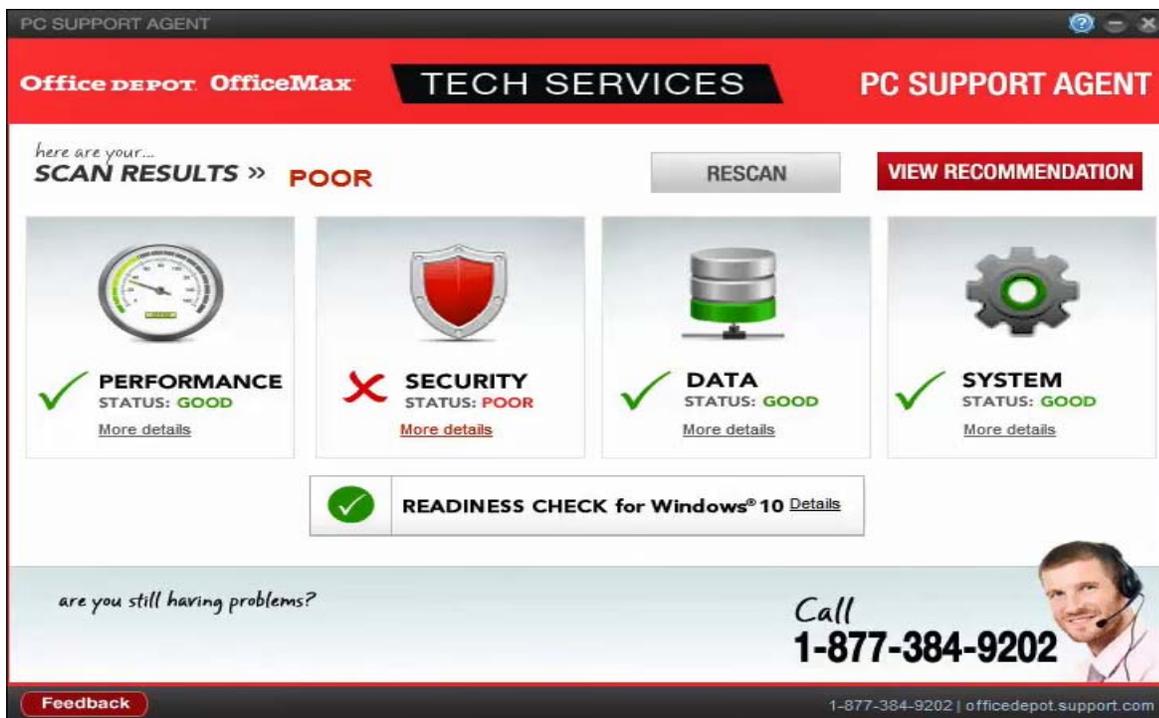


Figure 4: PC Health Check Program final scan results page (2016 in-store version)

43. In conjunction with displaying the final scan results page, the PC Health Check Program generated an updated Detailed Report purporting to show the specific results found by the program and any changes the program made. This Detailed Report also displayed the automated “results” of the Initial Checkbox Statements and the Quick Malware Scan. The Office Depot Companies required its store employees to review the final scan results generated in the Detailed Report with the consumer. The Office Depot Companies required its store employees running the scan to save this Detailed Report to the desktop on the consumer’s PC.

44. The PC Health Check Program’s final scan results page displayed a button labeled “view recommendation” in the upper right corner (as shown in Figure 4 above).

45. Clicking on this button led to a final screen that displayed a detailed description of the service the PC Health Check Program recommended for purchase (as shown in Figure 5 below).

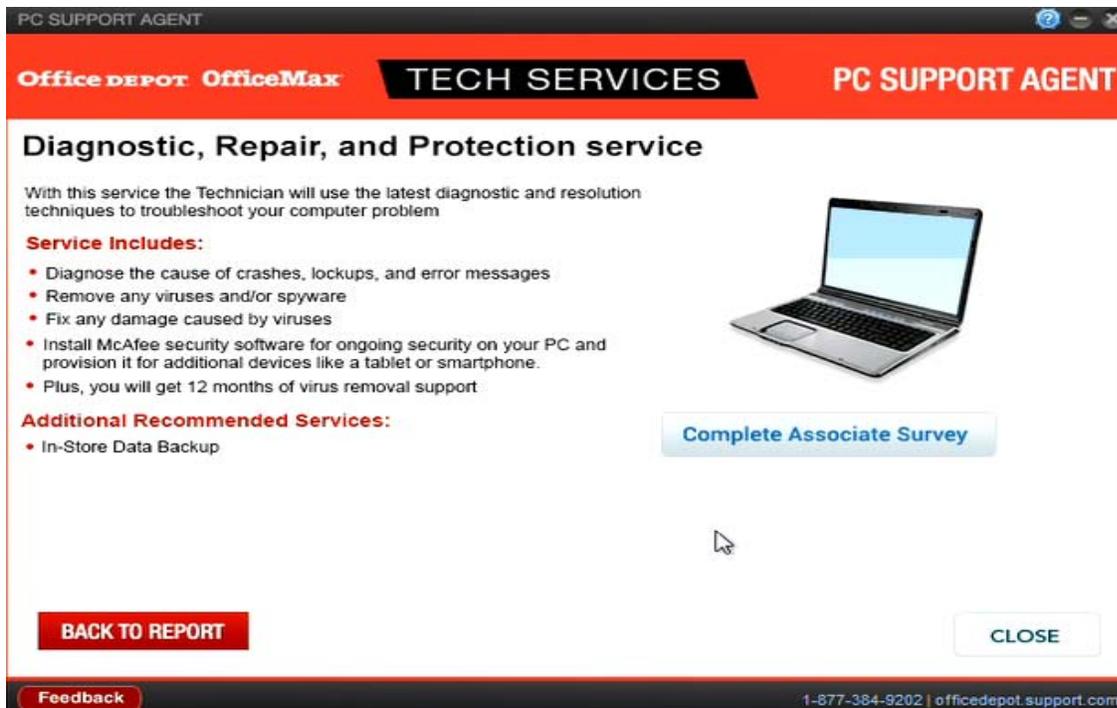


Figure 5: PC Health Check Program Service Recommendation Page (2016 in-store version)

46. The Office Depot Companies instructed its store employees to offer the recommendations made by the PC Health Check Program. For example, when the PC Health Check Program recommended a diagnostic, repair, and protection service, in numerous instances, the Office Depot Companies' store employees would recommend a service package that contained a diagnostic, repair, and protection service, in addition to any add-on services or products included in the package.

**Defendants Used the PC Health Check
Program to Make Deceptive Representations to Consumers**

47. Defendants configured and used the PC Health Check Program to falsely report to consumers that the scan portion of the program "found" or "identified" malware symptoms or infections whenever an Initial Checkbox Statement was checked, regardless of whether the computer was infected or had symptoms of malware. These misrepresentations were stated in a section of the Detailed Report relating to "Malware Symptoms." In fact, the scan itself did not "find" or "identify" anything to return the results listed in the "Malware Symptoms" section because the results under this section were triggered only by checking one of the Initial Checkbox Statements.

48. The PC Health Check Program reported the results of the Quick Malware Scan under a separate heading in the Detailed Report, as shown in **Exhibit A**. The results of the Quick Malware Scan had no impact on the findings that were always returned whenever one of the Initial Checkbox Statements was selected.

49. Defendants configured the PC Health Check Program to make these misrepresentations throughout the time Support.com provided the program to the Office Depot Companies.

50. Since at least 2009 through November 2016, the Office Depot stores, through the PC Health Check Program Detailed Report, falsely represented to consumers that the scan found symptoms of malware on the consumer's computer, as illustrated below:



Figure 6: PC Health Check Program Detailed Report when any Initial Checkbox Statements were checked

51. In fact, the scan was not connected to this finding in the Detailed Report. Rather, the PC Health Check Program automatically generated the "Malware Symptoms Found" result solely because the Office Depot store employee checked one or more of the Initial Checkbox Statements at the outset of running the program on a consumer's computer. As such, the "Malware Symptoms Found" result was independent of any actual scan or check performed by the PC Health Check Program.

52. Defendants further misrepresented to consumers, through the PC Health Check Program Detailed Report, what the scan had found or identified by making additional statements directly below the "Malware Symptoms Found" result. Support.com configured this language, with input and approval from the Office Depot Companies. The language in the Detailed Report changed over the time that Office Depot stores used the PC Health Check Program.

53. For example, from at least 2009 until approximately June 2011, immediately after misrepresenting to consumers that the PC Health Check Program found malware symptoms, Defendants compounded this misrepresentation by stating in the Detailed Report that consumers' computers "could be infected with malware," as seen below:



Figure 7: Additional language in the Office Depot PC Health Check Program Detailed Report when any Initial Checkbox Statements were checked (May 2009 to June 2011)

54. Starting in or around July 2011 and until October 2015, this language was modified and Defendants represented to consumers that the PC Health Check Program had “found infections in your system,” in addition to “finding” malware symptoms:

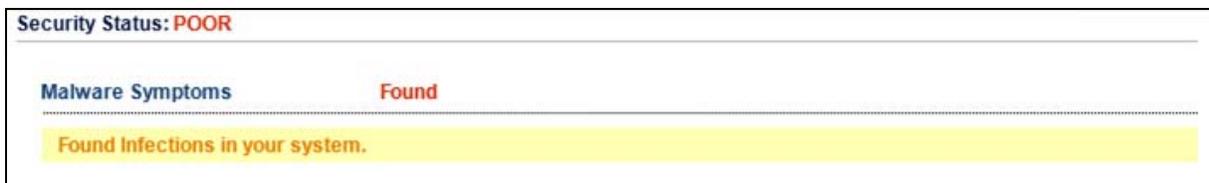


Figure 8: Additional language in the Office Depot PC Health Check Program Detailed Report when any Initial Checkbox Statements were checked (from at least July 2011 to October 2015)

55. In October 2015, Defendants changed the language found under the “Malware Symptoms Found” statement to state that the “scan has identified potential malware related symptoms”:

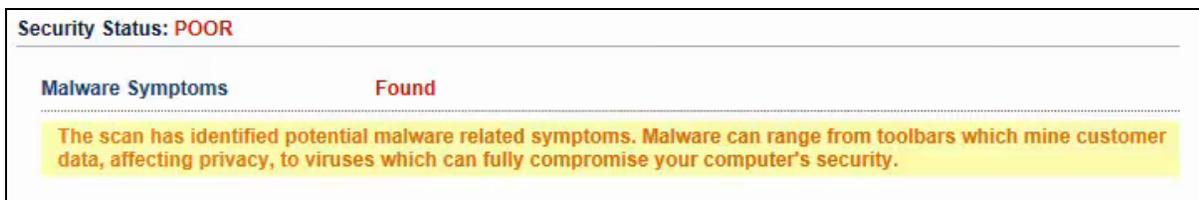


Figure 9: Additional language in the Office Depot PC Health Check Program Detailed Report when any Initial Checkbox Statements were checked (October 2015 to November 2016)

This language in the Detailed Report appeared until November 2016 when the Office Depot Companies stopped using the PC Health Check Program.

56. In late 2010 or early 2011, Support.com began providing OfficeMax the PC Health Check Program for use in OfficeMax stores. From at least July 2011 to November 2016,

OfficeMax used the PC Health Check Program to misrepresent to consumers that the scan found malware symptoms whenever an Initial Checkbox Statement was checked. Along with deceptively claiming that the PC Health Check Program found malware symptoms, the program also stated, without substantiation, that “Your system may be infected with malware”:

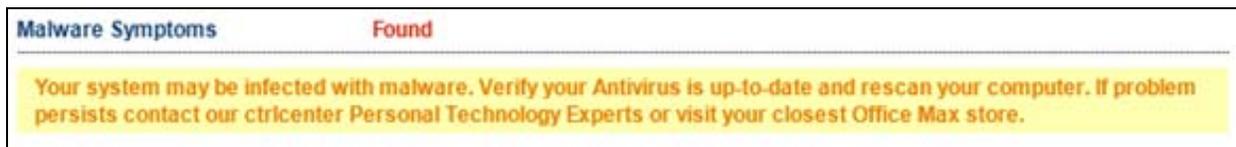


Figure 10: OfficeMax PC Health Check Program Detailed Report and additional language when any Initial Checkbox Statements were checked (July 2011 to November 2016)

57. Contrary to the statements made by the PC Health Check Program described in Paragraphs 50 through 56, the scan portion of the PC Health Check Program did not search for or find anything to generate the results appearing under the “Malware Symptoms” section of the Detailed Report. Rather, the PC Health Check Program was configured by Support.com and the Office Depot Companies such that whenever Office Depot or OfficeMax store employees checked one or more Initial Checkbox Statements before running the scan, the program automatically and invariably returned the result “Malware Symptoms Found” and the explanatory language that appeared under that heading.

**The Office Depot Companies Knew that PC Health Check Program
Falsely Reported that the Scan Found Malware Symptoms**

58. Since at least 2012, the Office Depot Companies understood that checking any of the four boxes would lead to a malware symptoms finding. Indeed, in May 2013, OfficeMax warned its stores not to run the PC Health Check Program *after* a tech repair service had been completed because, if “any of the questions at the beginning of the [PC Health Check Program] are checked, it will automatically suggest a Software repair,” because the “tool ‘assumes’ there is an infection based on questions asked.”

59. In 2015, Support.com account executives reminded the Office Depot Companies' sales management team that "if any of these [boxes] are selected, the recommended service will be a Diagnostic SKU, as the assumption is that the system is infected."

**The Office Depot Companies Aggressively Pushed the
PC Health Check Program Despite Complaints from Store Employees**

60. Since at least 2012, the Office Depot Companies received complaints and concerns from store employees about the accuracy and reliability of how the PC Health Check Program reported the detection of malware or malware symptoms.

61. In 2012, for example, an employee notified Office Max's corporate management team that PC Health Check would report malware symptoms on a computer that "doesn't have anything wrong with it" just by checking one of the four boxes. The employee wrote: "I cannot justify lying to a customer or being TRICKED into lying to them for our store to make a few extra dollars."

62. In 2013, the Florida Attorney General's Office informed Office Depot about complaints regarding Office Depot's tech-support services. One of the complaints came from an Office Depot employee who reported that Office Depot was using a software program that "will make consumers believe their computer has a virus...." This sample of complaints was forwarded to Office Depot's corporate counsel.

63. In 2014, an Office Depot store employee observed that the PC Health Check Program is "rather poor and either wrong or inconclusive" and that the program "finds malware symptoms but independent scans reveal no issues." The employee suggested that the Office Depot Companies reconfigure the PC Health Check software "so it does not come back with

false positives and/or Diag+Repair every time.” The employee’s concerns and suggestions were escalated to Office Depot’s corporate management team.

64. In 2015, an Office Depot store employee told the manager of his store that he believed the statement “found infections in your system” was deceptive. The store manager escalated this complaint through his chain of command at Office Depot, informing his district manager that the store employee had mentioned “calling a lawyer” and complaining to an internal employee complaint hotline. The district manager escalated the complaint to other management personnel. This complaint was also relayed to Support.com.

65. Despite these complaints and concerns, the Office Depot Companies instructed its store employees to continue to advertise the free tune-up service, continue to run PC Health Check Program on computers brought into the stores, and to convert 50% or more of all PC Health Check runs into tech-support service sales.

66. The Office Depot Companies rewarded store employees who were promoting the PC Health Check Program with positive performance reviews and by paying extra commissions to store managers and store employees who met their weekly PC Health Check runs and tech-support service sales goals. At the same time, the Office Depot Companies censured store managers and store employees who continually failed to meet these company-wide targets.

67. For example, the Office Depot Companies’ sales management team communicated to stores on a weekly (and often daily) basis, both the number of PC Health Checks stores were expected to run weekly, as well as the expected rate of converting such PC Health Checks into sales of tech-support services. The Office Depot Companies singled out stores that failed to meet these weekly PC Health Check targets by conducting

“underperforming” calls with the stores’ managers that reproached their stores’ performances. In numerous instances, district or store managers evaluated store employee performance based on how many PC Health Check appointments the store employee scheduled and what tech-support services they sold from that appointment.

68. The Office Depot Companies also launched incremental profit generating initiatives whereby it instructed its stores collectively to raise millions of dollars in profit by increasing the number of PC Health Check services performed and the rate of converting the PC Health Check services into tech-service sales.

69. In late 2016, a Seattle-area television station (“KIRO 7”) aired a series of investigative reports about the tech service divisions of Office Depot stores in Washington and Oregon that were flagging malware or malware symptoms on computers that were, unbeknownst to the stores, brand new and straight out of the box. A former Office Depot employee at one of these stores alerted KIRO 7 of these business practices. In November 2016, shortly after this news report broke, the Office Depot Companies suspended its use of the PC Health Check Program.

70. From 2012 until November 2016, the Office Depot Companies collected tens of millions of dollars from using the PC Health Check Program to sell costly diagnostic and repair services at its stores. During this time period, the Office Depot Companies used the PC Health Check Program on thousands of consumers’ computers each week across its stores nationwide.

71. Defendants have failed to provide assurances against future violations. Rather, the senior manager at the Office Depot Companies primarily responsible for procuring tech-

support vendors testified, under oath, that it would be proper for the company to continue offering the same PC Health Check to consumers even after the KIRO 7 news report.

72. Defendants have the incentive and opportunity to engage in similar tactics in the future. In or about 2017, the Office Depot Companies severed their relationship with Support.com and acquired a tech-support services company. Following this acquisition, the Office Depot Companies are continuing to offer computer diagnostic services and sell computer repair services.

Support.com Provided the Deceptive PC Health Check Program to the Office Depot Companies Knowing It Would be Used with Consumers

73. Support.com is the developer and licensor of the PC Health Check Program. Support.com retained the program's code and was responsible for making any changes to the PC Health Check Program, including changes related to the appearance and functionality of the program.

74. Support.com worked closely with the Office Depot Companies to configure and customize the PC Health Check Program. Support.com and the Office Depot Companies were both involved in drafting and implementing the language that appeared in the Detailed Reports generated by the PC Health Check Program.

75. Since at least June 2012, Support.com was also aware of complaints and concerns raised by Office Depot Companies' store employees about the purported finding of malware or malware symptoms by the PC Health Check Program. Support.com nonetheless continued to provide the PC Health Check Program to the Office Depot Companies.

76. Support.com provided the PC Health Check Program to the Office Depot Companies for nearly a decade. Support.com knew that the Office Depot Companies used the PC Health Check Program nationwide in its stores as a sales tool.

77. Since 2012, Support.com has collected tens of millions of dollars in revenues from the Office Depot Companies' use of the PC Health Check Program and sales of diagnostic and repair services at its stores.

VIOLATIONS OF THE FTC ACT

78. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits “unfair or deceptive acts or practices in or affecting commerce.”

79. Misrepresentations or deceptive omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

80. It is a violation of Section 5(a) of the FTC Act to place into the hands of another the means or instrumentalities of violating Section 5(a) of the FTC Act.

Count I – Deceptive Representations

81. In numerous instances in connection with the marketing, offering for sale, or sale of computer security or technical support services, Defendant Office Depot has represented, directly or indirectly, expressly or by implication, as described in Paragraphs 47 through 57, that the PC Health Check Program has detected infections or symptoms of malware on consumers' computers.

82. Office Depot's representations as set forth in Paragraph 81 of this Complaint are false, misleading, or were not substantiated at the time the representations were made.

83. Therefore, Office Depot's representations set forth in Paragraph 81 of this Complaint constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

Count II – Means and Instrumentalities

84. Defendant Support.com provided the Office Depot Companies with the PC Health Check Program. The representations made through the PC Health Check Program, expressly or by implication, as set forth in Paragraphs 47 to 57 of this Complaint, are false, misleading, or were not substantiated at the time they were made and constitute a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a). Support.com accordingly provided the Office Depot Companies with the means and instrumentalities for the commission of deceptive acts or practices.

85. Therefore, Support.com's practices as set forth in Paragraph 84 of this Complaint constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

CONSUMER INJURY

86. Consumers have suffered and will continue to suffer substantial injury as a result of Defendants' violations of the FTC Act. In addition, Defendants have been unjustly enriched as a result of their unlawful acts or practices. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

87. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and such other relief as the Court may deem appropriate to halt and redress violations

of any provision of law enforced by the FTC. The Court, in the exercise of its equitable jurisdiction, may award ancillary relief, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies, to prevent and remedy any violation of any provision of law enforced by the FTC.

PRAYER FOR RELIEF

Wherefore, Plaintiff FTC, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and the Court's own equitable powers, requests that the Court:

A. Enter a permanent injunction to prevent future violations of the FTC Act by Defendants;

B. Find Defendants jointly and severally liable for redress to all consumers who were injured as a result of their violations, as appropriate;

C. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act, including but not limited to, rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies; and

D. Award Plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

Respectfully submitted,

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General Counsel

Dated: 3/27/2019


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