

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

TY ANDERSON, individually, also d/b/a Ty
Anderson Enterprises, tyanderson.com,
cartoonporn.com, alienporn.com;

583 665 B.C. LTD., a Canadian corporation,
also d/b/a pornopictures.com;

VIRTUALYNX INTERNET, INC., a
Canadian corporation;

CHARLO BARBOSA, individually, and as an
officer of 583 665 B.C. LTD. and
VIRTUALYNX INTERNET, INC.

Defendants.

Case No.

COMPLAINT FOR PERMANENT
INJUNCTION

Plaintiff, the Federal Trade Commission (“FTC” or “the Commission”), for its complaint alleges as follows:

1. The Commission brings this action under Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), to secure preliminary and permanent injunctive relief, rescission of contracts, restitution, disgorgement, and other equitable relief for defendants’ unfair and deceptive acts and practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

JURISDICTION AND VENUE

2. This court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a) and 53(b).

3. Venue in the United States District Court for the Western District of Washington is proper under 15 U.S.C. § 53(b) and 28 U.S.C. § 1391(b), (c) and (d).

PLAINTIFF

4. Plaintiff, the Federal Trade Commission, is an independent agency of the United States Government created by statute. 15 U.S.C. § 41 *et seq.* The Commission is charged, *inter alia*, with enforcement of 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. The Commission is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act in order to secure such equitable relief as may be appropriate in each case. 15 U.S.C. § 53(b).

DEFENDANTS

5. Defendant Ty Anderson (“Anderson”) does business as “tyanderson.com,” “cartoonporn.com” and “alienporn.com” on the Internet and as Ty Anderson Enterprises. At all times relevant to this complaint, acting alone or in concert with others, he has participated in, formulated, directed, or controlled the acts and practices set forth in this complaint. He resides in British Columbia. Anderson has transacted business throughout the United States.

6. Defendant 583 665 B.C. Ltd. (“BC Ltd.”) was incorporated in British Columbia, Canada on April 16, 1999. Its address is Suite 218 - 470 Granville St., Vancouver, BC V6C1V5. It has transacted business throughout the United States.

7. Defendant Virtualynx Internet, Inc. (“Virtualynx”) was incorporated in British Columbia, Canada on April 3, 1996. Virtualynx’s address is 555 Hastings Street, Suite 813B, Vancouver, British Columbia. It also lists 1502 - 1166 Alberni Street, Vancouver, British Columbia, as an address. It has transacted business throughout the United States.

8. Defendant Charlo Barbosa (“Barbosa”) is president and secretary of defendants BC Ltd. and Virtualynx. At all times relevant to this complaint, acting alone or in concert with others, he has participated in, formulated, directed, or controlled, or has had the authority to control, the acts and practices of BC Ltd. and Virtualynx, including the acts and practices set forth in this complaint. He resides in British Columbia. Barbosa has transacted business throughout the United States.

9. Collectively or individually, defendants Anderson, BC Ltd., Virtualynx, and Barbosa do business as: “www.pornopictures.com,” “www.cartoonporn.com,” and “www.alienporn.com” on the Internet.

COMMERCE

10. At all times relevant to this complaint, the defendants have maintained a substantial course of trade, advertising, offering for sale and selling adult entertainment via both the Internet and international telephone lines, in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFINITIONS

11. For the purpose of this complaint, “World Wide Web” or “Web” means a system used on the Internet for cross-referencing and retrieving information. A “web site” is a set of electronic documents, usually a home page and subordinate pages, readily viewable on computer by anyone with access to the Web, standard software, and knowledge of the web site’s location or address.

12. For the purpose of this complaint, “Internet” means a worldwide system of linked computer networks that use a common protocol (TCP/IP) to deliver and receive information. The “Internet” includes the following forms of electronic communication: electronic mail, the World Wide Web, newsgroups, Internet Relay Chat, and file transfer protocols.

13. For the purpose of this complaint, “local exchange carrier” or “LEC” means the local telephone company from which a line subscriber receives his or her telephone bill.

14. For the purpose of this complaint, “line subscriber” means an individual or entity who has arranged with a local exchange carrier to obtain local telephone service provided through an assigned telephone number, and to be billed for such service on a monthly (or other periodic) basis.

15. For the purposes of this complaint, “videotext services” means visual (and possibly audio) information and entertainment services offered over the Internet through individual web sites.

16. “Service vendor” or “vendor” means an entity that offers videotext or other services that are billed to line subscribers either on the telephone bills received by line subscribers or on other bills sent directly to the line subscribers.

DEFENDANTS’ COURSE OF BUSINESS

17. Defendants are vendors of videotext services, specifically, adult videotext services. Beginning in 1996, defendants have operated and promoted one or more World Wide Web sites offering such services, including the web sites located at “www.pornopictures.com,” “www.cartoonporn.com,” and “www.alienporn.com.”

18. Computer users who visit these web sites are presented with several options for paying for defendants’ adult videotext services, including credit card charges, debit drafts to checking accounts and 900 number charges. Defendants also offer an alternative means of access for computer users who have no credit cards or checking accounts: “No credit card? No check? No problem! Download Our Sex Software For Instant Access.”

19. Defendants direct computer users who elect this last option to download a special “dialer” software. When the individuals activate this software, a scroll-down box displaying a lengthy licensing agreement appears on their computer screens. After the user clicks on an “I agree” button adjacent to the licensing agreement, the dialer software: (a) terminates the connection between the computer user and the user’s Internet Service Provider; (b) causes the individual’s computer modem to dial an international telephone number purportedly terminating in Madagascar; and (c) re-connects the user’s computer to the Internet, allowing the individual to access defendants’ adult videotext services. Defendants cause the telephone line subscriber whose telephone line was used for the Internet access to

incur charges represented as international long distance telephone charges to Madagascar on his or her telephone bill, or on other bills sent directly to the line subscriber, at rates of \$3.99 or more per minute for as long as the international long distance telephone connection is maintained.

20. When the computer user activates the dialer program, a system known as Automatic Number Identification (“ANI”) is used to capture the telephone number from which the call is placed, and to identify the line subscriber associated with that number. Defendants cause a bill to be sent to the line subscriber for the call, regardless of whether the line subscriber actually placed the call and accessed the web site, or authorized anyone else to place the call and access the web site.

21. Many line subscribers who have received bills for defendants’ services have not known what they are being billed for. In many instances, the line subscriber has discovered that a minor in the line subscriber’s household, or another who does not have the line subscriber’s authorization, has accessed defendants’ web sites. In other instances, neither the line subscriber nor anyone in the line subscriber’s household has ever used the line subscriber’s computer modem to call a telephone number in Madagascar.

22. In numerous instances, the cost to the telephone line subscriber for the computer user’s downloading and activation of defendants’ dialer software is substantially higher than the monthly fee for credit card, online check or 900-number payment.

23. Defendants’ use of the dialer software to bill for videotext as international long distance has caused line subscribers to incur hundreds of thousands of dollars in international long distance telephone charges.

24. Defendants receive payments for these charges less those amounts withheld by the U.S. and overseas telephone companies involved in the billing process.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

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

COUNT I

26. In numerous instances, defendants bill or cause to be billed, and attempt to collect or arrange for the collection of payment from, a line subscriber whose telephone may have been used to call an international telephone number through the line subscriber's modem, using the defendants' dialing program in order to access an Internet web site, but who did not himself or herself access such site or use the defendants' dialing program, or authorize anyone else to do so.

27. Line subscribers cannot reasonably block telephone calls to international numbers. Therefore, line subscribers cannot reasonably avoid defendants' billing and collection efforts for international telephone calls made through the defendants' dialing program by others while using those line subscribers' computer modems and telephone lines.

28. Defendants' practice of billing and attempting to collect from line subscribers whose computer modems and telephone lines may have been used to access Internet web sites using the defendants' dialing program, but who themselves have not accessed such web sites or used the defendants' dialing program, causes substantial injury to the line subscribers that is not outweighed by countervailing benefits to consumers or competition.

29. Therefore, defendants' practice, as alleged in paragraph 26, is unfair and violates Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT II

30. In numerous instances, defendants represent, expressly or by implication, that because a line subscriber's telephone was used to access Internet web sites through the line subscriber's computer modem using the defendants' dialing program, the line subscriber is legally obligated to pay defendants for that access, whether or not the line subscriber actually accessed such web sites.

31. In truth and in fact, in numerous instances, the line subscriber is not legally obligated to pay defendants for accessing Internet web sites through the defendants' dialing program.

32. Therefore, the representation set forth in paragraph 30 is false and deceptive and violates Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

CONSUMER INJURY

33. Consumers throughout the United States and abroad have suffered and continue to suffer monetary losses as a result of the defendants' unlawful acts or practices. In addition, defendants have been unjustly enriched as a result of their unlawful practices. Absent injunctive relief by this Court, defendants are likely to continue to injure consumers, benefit from unjust enrichment, and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

34. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and other ancillary relief, including consumer redress, disgorgement and restitution, to prevent and remedy any violations of any provision of law enforced by the FTC.

35. This Court, in the exercise of its equitable jurisdiction, may award other ancillary relief to remedy injury caused by defendants' law violations.

PRAYER FOR RELIEF

WHEREFORE, plaintiff requests that this Court, as authorized by Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and pursuant to its own equitable powers:

1. Award plaintiff such preliminary injunctive and ancillary relief, including a temporary restraining order, as may be necessary to avert the likelihood of consumer injury during the pendency of this action and to preserve the possibility of effective final relief;

2. Permanently enjoin the defendants from violating the FTC Act as alleged herein;

3. 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 of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten gains; and

4. 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,

FEDERAL TRADE COMMISSION
Debra A. Valentine
General Counsel

Charles A. Harwood
Regional Director

Patricia A. Hensley
Thomas P. Rowan
Attorneys for Plaintiff

Dated: _____, 2000

By: _____

Patricia A. Hensley
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CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing document to be served on all defendants on the date set forth below by the following indicated methods:

___ by personal service at _____.

___ by mailing a full, true, and correct copy thereof in a sealed, first-class postage-prepaid envelope, addressed to counsel for defendants, _____

_____,
and deposited with the United States Postal Service at Seattle, Washington, on the date set forth below.

___ by sending a full, true, and correct copy thereof via overnight courier in a sealed, prepaid envelope, addressed to counsel for defendants, _____

_____, on the date set forth below.

___ by faxing a full, true, and correct copy thereof to counsel for defendants, _____, at the fax number _____. The receiving fax machine was operating at the time of service and the transmission was properly completed, according to the confirmation report.

Dated _____.

Attorney for Plaintiff
Federal Trade Commission