

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

**RECEIVED**

AUG - 3 2005

**MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURT**

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FEDERAL TRADE COMMISSION,

Plaintiff,

v.

DATATECH COMMUNICATIONS, INC.,  
a corporation,

9102-3127 QUEBEC, INC., a corporation,  
d/b/a I-POINT MEDIA,

ROBERT BREWER, individually and as an  
owner, officer or director of the corporations,

ELIAS BAKOMICHALIS, individually and as  
an owner, officer or director of the corporations,  
and,

GREGORY MacNEIL, individually and as an  
owner, officer or director of the corporations,

Defendants.  
\_\_\_\_\_

Civil No. 03 C 6249

Judge Joan H. Lefkow

Magistrate Judge Nan R. Nolan

[PROPOSED]  
**AMENDED COMPLAINT FOR PERMANENT  
INJUNCTION AND OTHER EQUITABLE RELIEF**

Plaintiff, the Federal Trade Commission ("FTC" or "the Commission"), for its Amended  
Complaint alleges as follows:

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 secure temporary, preliminary and permanent injunctive

relief, restitution, rescission or reformation of contracts, disgorgement, and other equitable relief for Defendants' deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45 (a).

### **JURISDICTION AND VENUE**

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

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

### **PLAINTIFF**

4. Plaintiff FTC is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41 *et seq.* The Commission is charged with, *inter alia*, 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, and to secure such equitable relief, including restitution for injured consumers, as may be appropriate in each case. 15 U.S.C. § 53(b).

### **DEFENDANTS**

5. Defendant Datatech Communications, Inc. ("Datatech") is incorporated in Delaware. Datatech transacts or has transacted business in the Northern District of Illinois.

6. Defendant 9102-3127 Quebec Inc., d/b/a I-Point Media ("I-Point"), is a Canadian corporation with its office and principal place of business located at 1000 St. Antoine West, Suite

300, Montreal, Quebec H3C 3R7. It also does business as I-Point Media and Datatech Communications, Inc. I-Point transacts or has transacted business in the Northern District of Illinois.

7. Defendant Robert Brewer is or has been an owner, officer or director of Datatech and I-Point. At all times material to this Amended Complaint, acting alone or in concert with others, Brewer formulated, directed, controlled, or participated in the acts and practices of the corporate defendants, including the acts or practices set forth in this Amended Complaint. Defendant Brewer transacts or has transacted business in the Northern District of Illinois.

8. Defendant Elias Bakomichalis is or has been an owner, officer or director of Datatech and I-Point. At all times material to this Amended Complaint, acting alone or in concert with others, Bakomichalis formulated, directed, controlled, or participated in the acts and practices of the corporate defendants, including the acts or practices set forth in this Amended Complaint. Defendant Bakomichalis transacts or has transacted business in the Northern District of Illinois.

9. Defendant Gregory MacNeil is or has been an owner, officer or director of Datatech and I-Point. At all times material to this Amended Complaint, acting alone or in concert with others, MacNeil formulated, directed, controlled, or participated in the acts and practices of the corporate defendants, including the acts or practices set forth in this Amended Complaint. Defendant MacNeil transacts or has transacted business in the Northern District of Illinois.

## **COMMERCE**

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

## **DEFENDANTS’ BUSINESS PRACTICES**

11. Since at least 2000, and continuing thereafter, Defendants have engaged in a plan, program or campaign to sell listings in their business directories via interstate telephone calls to various businesses and other organizations (hereinafter “consumers”) throughout the United States.

12. Defendants market their business directory listings by making unsolicited outbound telephone calls to American consumers. The Defendants frequently do not disclose their identity to consumers when they call. In many instances, the Defendants claim to be with the Yellow Pages or consumers’ local telephone carriers. In either case, the Defendants claim that consumers have previously purchased a directory listing from them, and that they are calling to renew the listing.

13. Sometimes, when consumers are reluctant to agree to “renew” because, for example, they are not authorized to make purchases or they would like more time to decide, the Defendants assure these consumers that if they agree to renew and later change their minds they can always cancel without financial obligation when they receive the invoice billing them for the listing.

14. As soon as Defendants convince consumers to agree to “renew” their directory listings, they typically transfer the call to a verifier, who records consumers stating their name and address, and instructs consumers to make specific responses to a series of questions.

15. Based on Defendants’ statements during these telephone calls, consumers believe that they are agreeing to renew a previously purchased listing in Defendants’ business directories. Defendants also represent to some consumers that they have a right to cancel their “renewal” listing without financial obligation.

16. Defendants follow up their telephone calls by sending invoices to consumers, typically billing them \$299.95 for a two year listing in the Defendants’ business directory and a copy of the AT&T National Business Buyers Guide, plus \$20.00 shipping and handling charges. The Defendants do not send the business directory or buyers guide with the invoice. These items are sent only if consumers return the invoice with the appropriate payment.

17. In some instances, even after consumers state that they are not interested in “renewing” their directory listings, Defendants send consumers invoices billing them for a listing in Defendants’ business directory.

18. In numerous instances, after receiving the Defendants’ invoices, consumers discover that they have never purchased a directory listing from Defendants before, and that Defendants have billed them for a “new” purchase instead of a renewal. Upon further inquiry of the Defendants, some consumers learn that their previous listing in the Defendants’ directory was a “complimentary” or “free” listing provided by the Defendants, without the knowledge of the consumer.

19. When consumers try to cancel, Defendants refuse to honor the consumers' cancellation requests. Instead, Defendants tell these consumers that they agreed to purchase a listing in Defendants' business directory. The Defendants often play the tape recording made during the initial telephone call to consumers to "prove" that they are obligated to pay. Sometimes the Defendants agree to cancel the directory listings, but only if consumers pay a cancellation fee, typically \$99.00 to \$149.00.

20. Similarly, Defendants refuse to honor the cancellation requests of those consumers who, based on their initial telephone conversations with Defendants' sales representatives, were led to believe that they had an express right to cancel their "renewal" listing without financial obligation. Defendants tell these consumers that they do not have a right to cancel.

21. When consumers refuse to pay Defendants' invoices because of the deceptive tactics the Defendants used to obtain the "sale," the Defendants refer the consumers' accounts for collection and threaten to damage the credit ratings of those consumers that refuse to pay.

#### **VIOLATIONS OF SECTION 5 OF THE FTC ACT**

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

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

#### **COUNT I**

24. In numerous instances, in connection with the offering for sale, sale, or distribution of their business directories, Defendants have represented to consumers, expressly or

by implication, through, *inter alia*, telephone calls, that consumers have a preexisting business relationship with the Defendants.

25. In truth and in fact, consumers typically do not have a preexisting business relationship with Defendants.

26. Therefore, Defendants' representations set forth in Paragraph 24 are false and misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

### **COUNT II**

27. In numerous instances, in connection with the offering for sale, sale, or distribution of business directory listings and business directories, Defendants have represented to consumers, expressly or by implication, through, *inter alia*, telephone calls, that consumers have a right to cancel their directory listings without financial obligation.

28. In truth and in fact, in most instances, Defendants do not allow consumers to cancel their directory listings without financial obligation.

29. Therefore, Defendants' representations set forth in Paragraph 27 are false and misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

### **COUNT III**

30. In numerous instances, in connection with the offering for sale, sale, or distribution of their business directories, Defendants have represented to consumers, expressly or by implication, through, *inter alia*, telephone calls, invoices, or letters, that consumers have agreed to purchase listings in Defendants' business directories.

31. In truth and in fact, consumers have not agreed to purchase listings in Defendants' business directories.

32. Therefore, Defendants' representations set forth in Paragraph 30 are false and misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

### **CONSUMER INJURY**

33. Consumers throughout the United States have suffered substantial monetary loss as a result of Defendants' unlawful acts or practices. Absent injunctive relief from this Court, Defendants are likely to continue to injure consumers and harm the public.

### **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 provisions of law enforced by the Commission.

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

1. Award Plaintiff such preliminary injunctive and ancillary relief 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;

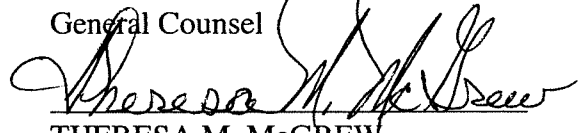


2. Permanently enjoin Defendants from violating the FTC Act, as alleged herein;
3. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act, including, but not limited to, rescission or reformation of contracts, restitution, refund of monies paid, and the disgorgement of ill-gotten monies; and
4. Award Plaintiff the costs of bringing this action, as well as such other and additional equitable relief as the Court may determine to be just and proper.

Dated: August 3, 2005

Respectfully Submitted,

WILLIAM BLUMENTHAL  
General Counsel



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