

RECEIVED

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

MAY 27 2009

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

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

6654916 CANADA INC., a Canadian corporation,
d/b/a NATIONAL YELLOW PAGES ONLINE
INC.;

9187-4131 QUÉBEC INC., a Quebec corporation,
d/b/a SHARING TELECOM SOLUTIONS;

NATIONAL YELLOW PAGES ONLINE, LLC,
a Wisconsin limited liability company;

DRS WITHOUT PREJUDICE, INC., a Wisconsin
corporation;

RIAZ A. BUTT, individually and as an owner,
officer, or director of Corporate Defendants
National Yellow Pages Online, LLC, and DRS
Without Prejudice, Inc.;

FAHEEM AHMED MUGHAL, individually and
as an owner, officer, or director of Corporate
Defendants 6654916 Canada Inc., and National
Yellow Pages Online, LLC;

NABEEL AZMAT, individually and as an owner,
officer, or director of Corporate Defendant
6654916 Canada Inc.;

SOHAIL AZMAT, individually and as an owner,
officer, or director of Corporate Defendant
6654916 Canada Inc.; and

BILAL AHMED MALIK, a/k/a BOBBY MALIK,
individually and as an owner, officer, or director
of Corporate Defendants 6654916 Canada Inc., and

Civil No.

~~JUDGE MANVING~~

MAGISTRATE JUDGE COX

090 3159

9187-4131 Québec Inc., and also doing business)
as ONLINE NATIONAL YELLOW PAGES,)
)
Defendants.)
_____)

COMPLAINT FOR PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF

Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), for its 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, rescission or reformation of contracts, restitution, disgorgement of ill-gotten gains, and other equitable relief against Defendants for engaging in 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 is proper in this district under 15 U.S.C. § 53(b) and 28 U.S.C. § 1391(b), (c), and (d).

PLAINTIFF

4. Plaintiff Federal Trade Commission is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58, as amended. The Commission is charged, *inter alia*, with enforcing 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 and disgorgement, as may be appropriate in each case. 15 U.S.C. § 53(b).

DEFENDANTS

5. Defendant 6654916 Canada Inc. is a Canadian corporation with its registered office and principal place of business located at 4055 Sainte-Catherine Ouest, Bur. 150, Montréal, Québec, Canada H3Z 3J8. Defendant 6654916 Canada Inc. operates under the business name “National Yellow Pages Online Inc.” (“NYPO Inc.”). NYPO Inc. transacts or has transacted business in the Northern District of Illinois and throughout the United States.

6. Defendant 9187-4131 Québec Inc. is a Quebec corporation with its registered office and principal place of business located at 4055 Sainte-Catherine Ouest, Bur. 150, Montréal, Québec, Canada H3Z 3J8. Defendant 9187-4131 Québec Inc. operates under the business name “Sharing Telecom Solutions” (“Sharing Telecom”). Sharing Telecom transacts or has transacted business in the Northern District of Illinois and throughout the United States.

7. Defendant National Yellow Pages Online, LLC (“NYPO LLC”), is a Wisconsin limited liability company with its registered office located at 3877 South 13th Street, Milwaukee, Wisconsin 53221. NYPO LLC conducts business from Post Office Box 183, Russell, Illinois 60075-9998. NYPO LLC transacts or has transacted business in the Northern District of Illinois and throughout the United States.

8. Defendant DRS Without Prejudice, Inc. (“DRS”), is a Wisconsin corporation with its registered office located at 3877 South 13th Street, Milwaukee, Wisconsin 53221. DRS conducts business from Post Office Box 210513, Milwaukee, Wisconsin 53221-8009. DRS transacts or has transacted business in the Northern District of Illinois and throughout the United States.

9. Defendant Riaz A. Butt is or has been an owner, officer, or director of NYPO LLC and DRS. At all times material to this Complaint, acting alone or in concert with others, Defendant Butt has formulated, directed, controlled, or participated in the acts and practices of NYPO Inc., Sharing Telecom, NYPO LLC, and DRS (the “Corporate Defendants”), including the acts and practices set forth in this Complaint. Defendant Butt transacts or has transacted business in the Northern District of Illinois and throughout the United States.

10. Defendant Faheem Ahmed Mughal is or has been an owner, officer, or director of NYPO Inc. and NYPO LLC. At all times material to this Complaint, acting alone or in concert with others, Defendant Mughal has formulated, directed, controlled, or participated in the acts and practices of the Corporate Defendants, including the acts and practices set forth in this Complaint. Defendant Mughal transacts or has transacted business in the Northern District of Illinois and throughout the United States.

11. Defendant Nabeel Azmat is or has been an owner, officer, or director of NYPO Inc. At all times material to this Complaint, acting alone or in concert with others, Defendant Nabeel Azmat has formulated, directed, controlled, or participated in the acts and practices of the Corporate Defendants, including the acts and practices set forth in this Complaint. Defendant Nabeel Azmat transacts or has transacted business in the Northern District of Illinois and throughout the United States.

12. Defendant Sohail Azmat is or has been an owner, officer, or director of NYPO Inc. At all times material to this Complaint, acting alone or in concert with others, Defendant Sohail Azmat has formulated, directed, controlled, or participated in the acts and practices of the Corporate Defendants, including the acts and practices set forth in this Complaint. Defendant

Sohail Azmat transacts or has transacted business in the Northern District of Illinois and throughout the United States.

13. Defendant Bilal Ahmed Malik, also known as Bobby Malik, is or has been an owner, officer, or director of NYPO Inc. and Sharing Telecom. Defendant Malik also does business as Online National Yellow Pages through a mail drop located at 8345 NW 66th Street, #5081, Miami, Florida 33166-2626. At all times material to this Complaint, acting alone or in concert with others, Defendant Malik has formulated, directed, controlled, or participated in the acts and practices of the Corporate Defendants, including the acts and practices set forth in this Complaint. Defendant Malik transacts or has transacted business in the Northern District of Illinois and throughout the United States.

14. Since at least 2007, Defendants have acted as a common enterprise to sell listings in an Internet business directory. In operating their common business enterprise, Defendants NYPO Inc., Sharing Telecom, NYPO LLC, and DRS have shared officers and office locations, have commingled funds, are commonly controlled, and have engaged in a common scheme.

COMMERCE

15. At all times relevant to this 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

16. Since at least 2007, and continuing thereafter, Defendants have engaged in a plan, program, or campaign to deceptively sell listings in an Internet business directory via interstate telephone calls to small businesses and other organizations throughout the United States, such as churches, doctors’ offices, and local retailers (hereinafter “consumers”).

17. Defendants market their Internet business directory listings by making unsolicited outbound telephone calls to United States consumers. Defendants use a variety of tactics to induce consumers to pay for a listing in their Internet directory. Typically, Defendants' telemarketers identify themselves to consumers as the "National Yellow Pages Online" and tell consumers that they are calling to "verify" or "update" the business name, address, and telephone number for the consumer's listing in Defendants' online directory. Defendants' telemarketers represent, expressly or by implication, that the consumer previously was listed in Defendants' directory and that they are calling to renew the listing.

18. When consumers ask Defendants' telemarketers whether they are affiliated with their yellow pages directory, Defendants' telemarketers falsely respond that they are with the consumer's national online yellow pages directory and that the consumer has previously been listed in Defendants' directory.

19. In numerous instances, consumers who receive Defendants' telemarketing calls proceed to verify the requested information, mistakenly believing that the consumer has previously been listed in Defendants' business directory or that someone else in the consumer's organization previously authorized or purchased the listing.

20. In numerous instances, once the consumer has confirmed the requested information, Defendants' telemarketers transfer the call to a verifier employed by Defendants, who again asks the consumer to verify the business name, address, and telephone number. Answers to these questions are recorded by Defendants, who later point to these recordings as evidence that consumers authorized their listings in Defendants' business directory.

21. To the extent that Defendants' verifiers mention the cost of the listing, they

sometimes indicate that the cost is the same as last year, even though consumers have not previously purchased or paid for Defendants' Internet directory listings.

22. Defendants follow up their telephone calls by mailing or faxing invoices to consumers. The invoices deceptively display the well-known image of two walking fingers, a symbol frequently associated with well-known yellow pages directories. Defendants' invoices typically bill consumers \$389.99 for a "Preferred Client Listing" that includes "Company Name, Address & Phone Number(s)," "Email & Web Page Listing & Linking," and "Company Logo & Description." Defendants typically mail or fax their invoices to the attention of "Accounts Payable," but list the name of the individual who took Defendants' telemarketing call in a box labeled "Purchaser." The invoices reference one of Defendants' websites, www.NationalYellowPagesOnline.com or www.National-YP-Online.com.

23. Upon receiving Defendants' invoices, many consumers pay, mistakenly believing that Defendants represent the yellow pages company with which they have an existing relationship.

24. In numerous instances, however, consumers investigate Defendants' invoices and discover that no one within the organization previously purchased or ordered a directory listing from Defendants and that Defendants have billed the consumer for a "new" purchase instead of a renewal. Upon further inquiry to Defendants, some consumers are advised that their previous listing in Defendants' directory was a "complimentary" or "free" listing provided without the consumers' knowledge or consent.

25. When consumers contact Defendants to complain that they never ordered the directory listing and try to cancel, Defendants tell consumers that the individual who took Defendants' telemarketing call ordered the listing. Defendants purport to have a recording of

that individual authorizing the purchase of the directory listing, and Defendants tell consumers that the recording constitutes a binding oral contract. Based on these recordings, Defendants refuse to permit consumers to avoid paying for the directory listing.

26. In numerous instances, consumers ignore or otherwise refuse to pay Defendants' invoices because the directory listing was never ordered or authorized by anyone in the consumer's organization. In those cases, Defendants take a number of steps to attempt to induce consumers to pay. They make multiple collection calls and mail or fax multiple invoices to consumers that include late fees. In some instances, these late fees add well over \$100.00 to the amount Defendants claim is due. Defendants also threaten to send accounts to collection and/or to damage consumers' credit ratings.

27. In numerous instances, consumers who repeatedly ignore or otherwise refuse to pay Defendants' invoices receive a collection letter titled "Preliminary Notice" from DRS. The collection letter lists the "Creditor" as "National Yellow Pages Online," demands payment of the past-due amount plus late fees, and threatens to damage the consumer's credit rating.

28. When consumers call DRS to complain, Defendants often offer to accept the original \$389.99 if the consumer pays immediately, in lieu of also collecting the alleged late fees.

29. In numerous instances, consumers pay Defendants' invoices, either because they mistakenly believe that someone within the consumer's organization authorized or purchased the directory listing, or because they believe that paying the invoice will put an end to the harassing telephone calls and mailings from Defendants.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

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

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

COUNT I

32. In numerous instances, in connection with the offering for sale or sale of Internet directory listings, Defendants have represented to consumers, expressly or by implication, through, *inter alia*, telephone calls, that consumers have a preexisting business relationship with Defendants.

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

34. Therefore, Defendants' representation set forth in Paragraph 32 is false and misleading and constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT II

35. In numerous instances, in connection with the offering for sale or sale of Internet directory listings, Defendants have represented to consumers, expressly or by implication, through, *inter alia*, telephone calls, invoices, or collection letters, that consumers have agreed to purchase a listing in Defendants' Internet directory.

36. In truth and in fact, consumers have not agreed to purchase a listing in Defendants' Internet directory.

37. Therefore, Defendants' representation set forth in Paragraph 35 is false and misleading and constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT III

38. In numerous instances, in connection with the offering for sale or sale of Internet directory listings, Defendants have represented to consumers, expressly or by implication, through, *inter alia*, telephone calls, invoices, or collection letters, that consumers owe money to Defendants for a listing in Defendants' Internet directory.

39. In truth and in fact, consumers do not owe money to Defendants for a listing in Defendants' Internet directory.

40. Therefore, Defendants' representation set forth in Paragraph 38 is false and misleading and constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

CONSUMER INJURY

41. Consumers in the United States have suffered, and continue to suffer, monetary losses as a result of Defendants' unlawful acts and practices. In addition, Defendants have been unjustly enriched as a result of their unlawful acts and 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

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

43. The Court, in the exercise of its equitable jurisdiction, may award ancillary relief, including, but not limited to, rescission of contracts, restitution, and the disgorgement of ill-gotten gains, to prevent and remedy injury caused by Defendants' law violations.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the Federal Trade Commission, 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:

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, including, but not limited to, a temporary restraining order, a preliminary injunction, and an order freezing assets;
2. Enter a permanent injunction to prevent future violations of the FTC Act by Defendants;
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, and the disgorgement of ill-gotten monies; 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,

DAVID C. SHONKA
Acting General Counsel

Dated: May 27, 2009

s/William J. Hodor
WILLIAM J. HODOR
THERESA M. McGREW
Attorneys for Plaintiff
Federal Trade Commission

55 West Monroe Street, Suite 1825
Chicago, Illinois 60603
(312) 960-5592 [Tel./Hodor]
(312) 960-5634 [Tel./McGrew]
(312) 960-5600 [Facsimile]