

JURISDICTION AND VENUE

2. 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).

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

PLAINTIFF

4. 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.

5. 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) and 56(a)(2)(A).

DEFENDANTS

6. Defendant Yellow Page Marketing B.V. (“Yellow Page”), also doing business as Yellow Page B.V. and Yellow Page (Netherlands) B.V., is a foreign corporation with its principal places of business at Calle Protectora 10, Local 4, Palma de Mallorca, Spain and The Hague Equinox, Jan Pieterszoon Coenstraat 7, 2595 WP The Hague, Netherlands. Yellow Page transacts or has transacted business in this district and throughout the United States.

7. Defendant Yellow Publishing Ltd. (“Yellow Publishing”) is a foreign corporation with its principal place of business at 111 Picadilly, Manchester, United Kingdom. Yellow Publishing transacts or has transacted business in this district and throughout the United States.

8. Defendant Yellow Data Services Ltd. (“Yellow Data”) is a foreign corporation with its principal place of business at 145-157 St. John Street, London, United Kingdom. Yellow Data transacts or has transacted business in this district and throughout the United States.

9. Jan Marks (“Marks”) is an owner, officer, or director of Yellow Page. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices set forth in this Complaint. Defendant Marks, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

10. Defendants Yellow Page, Yellow Publishing, and Yellow Data (collectively, “Corporate Defendants”) have operated as a common enterprise while engaging in the deceptive acts and practices alleged below. Defendants have conducted the business practices described below through an interrelated network of companies that have common ownership, managers, and business functions, that operate a common scheme, and that commingle funds. Because these Corporate Defendants have operated as a common enterprise, each of them is jointly and severally liable for the acts and practices alleged below. Defendant Marks has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of the Corporate Defendants that constitute the common enterprise.

COMMERCE

11. At all times material 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 ACTIVITIES

12. Since at least 2009, Defendants have engaged in a plan, program, or campaign to induce small businesses and nonprofit organizations in the United States, Canada, Australia, and possibly other countries, to pay for unordered listings in an Internet directory. Those targeted by Defendants' scheme include churches, doctors' and dentists' offices, and local retailers (hereinafter "consumers").

13. Defendants send facsimile transmissions to targeted consumers, in the United States and elsewhere, with whom Defendants have no preexisting relationship. The unsolicited faxes are not preceded by any type of telemarketing call or other attempt to sell listings in Defendants' Internet directory. The faxes are addressed neither to a specific person in the consumer's organization, nor even to a particular department within the business, such as accounting or marketing.

14. Each fax consists of a one-page pre-printed form that bears a name such as *YellowPage-Illinois.com* or *YellowPage-NewYork.com*, depending on the state in which the consumer is located. Defendants maintain such sites for all fifty states and the District of Columbia. In many instances, next to the website name on the top of the form is a "walking fingers" logo that is identical to the logo commonly used by and associated with local yellow pages directories. In other instances, the "walking fingers" logo is inverted. Under the website name, Defendants' fax prominently announces: "now with free submission to www.google.com."

15. Defendants' form then lists the recipient's "basic data," including such information as the company name, address, telephone number, website address, and Yellow Page ID number, and instructs the consumer to "[c]orrect and add any additional information to your

record.” The form does not purport to be soliciting a contract from the consumer for new business, but instead falsely suggests that the parties have a preexisting relationship. The form does not provide a telephone number that recipients may call to ask any questions and instead lists only a fax number to which recipients are instructed to “fax the completed form back” by the listed deadline, typically within one week.

16. Only in the fine print at the very bottom of the form are consumers told that by returning the form to Defendants, they will be deemed to have ordered a two-year registration in Defendants’ Internet directory at the cost of \$89 per month, payable a full year in advance. Many consumers who receive Defendants’ unsolicited faxes do not see or read this fine print and believe from the remainder of the form that they are simply being asked to confirm and update their contact information for an existing directory listing.

17. In numerous instances, consumers follow the form’s instructions by correcting or adding “additional information to their record,” believing that they are simply updating information for an existing listing in their local yellow pages directory, rather than agreeing to purchase and pay for an entirely new service from a company with which they have not previously done business. In many instances, the person who signs and returns Defendants’ form is not even authorized to enter into contracts or purchase services on the consumer’s behalf.

18. Consumers who sign and return the one-page form then receive a faxed invoice from Defendants seeking payment of \$1,068, the total amount purportedly due to cover twelve months of the \$89 monthly fee for a listing in Defendants’ Internet directory. The invoice again includes the state-specific yellow page website name that appeared on the fax, as well as the “walking fingers” logo. The invoice directs consumers to make their check payable to Yellow Page B.V. and to mail the check to an address in New York City.

19. Upon receiving Defendants' invoices, many consumers pay, mistakenly believing that Defendants are the publisher, or are affiliated with the publisher, of the local yellow page directory with which the consumers have an existing relationship.

20. In numerous instances, however, consumers realize that the invoice is for a new service that they did not order and do not want. These consumers refuse to pay the invoice and often return it with a note indicating that the listing was never ordered and should be canceled. Many consumers even explain to Defendants that the person who updated the information and signed the form did not have the authority to enter into contracts or purchase services on behalf of the business. Defendants often respond by telling consumers that the order cannot be canceled, as the cancellation period runs only from "the date of signing the order form [to] the date of billing the invoice." Defendants also warn these consumers that by returning the original fax solicitation, they entered into a legally binding contract that Defendants intend to enforce.

21. Consumers who persist in refusing to pay subsequently receive additional faxes from Defendants, purporting to assess late fees on the amounts allegedly owed, and threatening to refer the alleged debts to a collection agency and to harm consumers' credit ratings. In some instances, consumers end up paying Defendants for the unordered listing simply to put an end to this harassment.

VIOLATIONS 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 or deceptive omissions of material fact constitute 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 or sale of Internet directory listings, Defendants have represented, directly or indirectly, expressly or by implication, that consumers have a preexisting business relationship with Defendants.

25. In truth and in fact, in numerous instances in which Defendants have made the representation set forth in Paragraph 24 of this Complaint, consumers do not have a preexisting business relationship with Defendants.

26. Therefore, Defendants' representation as set forth in Paragraph 24 of this Complaint 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

28. In numerous instances in connection with the offering for sale or sale of Internet directory listings, Defendants have represented, directly or indirectly, expressly or by implication, that Defendants are the publisher, or are affiliated with the publisher, of the consumer's local yellow pages directory.

29. In truth and in fact, in numerous instances in which Defendants have made the representation set forth in Paragraph 28 of this Complaint, Defendants are not the publisher, and are not affiliated with the publisher, of the consumer's local yellow pages directory.

30. Therefore, Defendants' representation as set forth in Paragraph 28 of this Complaint 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

31. 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

32. 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. 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, temporary and preliminary injunctions and an order freezing assets;

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

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

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