

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

_____)
FEDERAL TRADE COMMISSION,)
)
Plaintiff,) Case No. 15-cv-2047
)
v.) Judge Norgle
)
AMERICAN YELLOW BROWSER, INC.,) Magistrate Judge Cole
<i>et al.</i> ,)
)
Defendants.)
_____)

**DEFAULT JUDGMENT AND ORDER FOR PERMANENT
INJUNCTION AND MONETARY RELIEF**

Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), filed its Complaint for Permanent Injunction and Other Equitable Relief (“Complaint”) in this matter pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b). The FTC now having filed its Motion for Default Judgment and Order for Permanent Injunction and Monetary Relief (“Motion”), and the Court having considered the FTC’s Motion, and supporting exhibits, and the entire record, the FTC’s Motion is hereby granted, and **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** as follows:

FINDINGS

1. This is an action by the Commission instituted under Sections 5(a) and 13(b) of the FTC Act, 15 U.S.C. §§ 45(a) and 53(b). The Complaint seeks permanent injunctive relief against Defendants in connection with the marketing, promotion, offering for sale, or sale of business directory listings. Pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), the Commission has the authority to seek the relief contained herein.

2. This Court has jurisdiction over the subject matter of this case and personal jurisdiction over the parties hereto.

3. The Commission's Complaint states claims upon which relief may be granted under Sections 5(a) and 13(b) of the FTC Act, 15 U.S.C. §§ 45(a) and 53(b).

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

5. The activities of Defendants are "in or affecting commerce" as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

6. Defendants were properly served with the Summons and Complaint in this matter. All Defendants thereafter failed to file any responsive pleading as required by Rule 12(a) of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 12(a). On August 21, 2015, the Court entered an order of default as to all Defendants.

7. The factual allegations in the Commission's Complaint are taken as true against Defendants. Those allegations and the evidence supporting them establish that Defendants violated Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

8. The Court now finds that, in connection with the marketing, promotion, offering for sale, or sale of business directory listings, Defendants have violated Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), by falsely representing, directly or indirectly, expressly or by implication, that consumers have agreed to purchase a listing in Defendants' business directory.

9. The Court further finds that, in connection with the marketing, promotion, offering for sale, or sale of business directory listings, Defendants have violated Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), by falsely representing, directly or indirectly, expressly or by

implication, that consumers owe money to Defendants for a listing in Defendants' business directory.

10. It is proper to enter a permanent injunction to prevent a recurrence of Defendants' violations of the FTC Act, 15 U.S.C. § 45, and to enter equitable monetary relief against Defendants.

11. Defendants' net sales (total sales minus refunds, returns, and chargebacks) amount to at least one million two hundred forty-one thousand seven hundred forty United States Dollars ("USD") (\$1,241,740 USD) from the conduct alleged in the Complaint.

12. The Commission is therefore entitled to equitable monetary relief against Defendants in the amount of one million two hundred forty-one thousand seven hundred forty USD (\$1,241,740 USD), for which Defendants are jointly and severally liable.

13. This Order is in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law.

14. Entry of this Order is in the public interest.

DEFINITIONS

For purposes of this Order, the following definitions apply:

1. "**Consumer**" includes any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.

2. "**Corporate Defendants**" means American Yellow Browser, Inc., American Yellow Group Inc., Distribution H.E.P. Inc., also doing business as American Yellow Distribution and Medical Yellow Directories Inc., Official Yellow Guide Inc., Publication A.A.P. Inc., also doing business as All American Pages and Official Yellow Guide, Publication A.Y.B. Inc., also doing business as American Yellow Browser Inc., American Yellow Group

Inc., and All American Pages Inc., and Publications A.Y.D. Inc., and their successors and assigns, as well as any fictitious business entities or business names created or used by these entities, or any of them.

3. “**Defendants**” means all of the Individual Defendants and the Corporate Defendants, individually, collectively, or in any combination.

4. “**Individual Defendants**” means Ivan Chernev and German Lebedev, and by whatever other names each may be known.

5. “**Person**” or “**persons**” includes a natural person, an organization or other legal entity, including a corporation, partnership, sole proprietorship, limited liability company, association, cooperative, or any other group or combination acting as an entity.

6. “**Plaintiff**” means the Federal Trade Commission

ORDER

I.

BAN ON CERTAIN ACTIVITIES

IT IS ORDERED that Defendants, whether acting directly or indirectly, are permanently restrained and enjoined from engaging in, participating in, or assisting others in the advertising, marketing, promotion, offering for sale, or sale of business directories and/or listings in business directories in any format.

II.

PROHIBITED BUSINESS PRACTICES

IT IS FURTHER ORDERED that Defendants, Defendants’ officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the

advertising, marketing, promotion, offering for sale, or sale of any good or service, are permanently restrained and enjoined from misrepresenting, or assisting others in misrepresenting, expressly or by implication, any material fact, including, but not limited to:

- A. That consumers have agreed to purchase a good or service from Defendants;
- B. That consumers owe money to Defendants for any good or service;
- C. The nature of Defendants' relationship with consumers, and the purpose of their communication with consumers;
- D. The total cost to purchase, receive, or use the good or service;
- E. Any material restrictions, limitations, or conditions to purchase, receive, or use the good or service;
- F. Any material aspect of the performance, efficacy, nature, or central characteristics of the good or service; or
- G. Any material aspect of the nature or terms of a refund, cancellation, exchange, or repurchase policy for the good or service.

III.

MONETARY JUDGMENT

IT IS FURTHER ORDERED that:

- A. Judgment in the amount of one million two hundred forty-one thousand seven hundred forty United States Dollars (\$1,241,740 USD) is entered in favor of the Commission against Defendants, jointly and severally, as equitable monetary relief.
- B. Defendants are ordered to pay to the Commission one million two hundred forty-one thousand seven hundred forty United States Dollars (\$1,241,740 USD). Such payment must

be made within seven (7) days of entry of this Order by electronic funds transfer in accordance with instructions previously provided by a representative of the Commission.

C. All money paid to the Commission pursuant to this Order may be deposited into a fund administered by the Commission or its designee to be used for equitable relief, including consumer redress and any attendant expenses for the administration of any redress fund. If a representative of the Commission decides that direct redress to consumers is wholly or partially impracticable or money remains after redress is completed, the Commission may apply any remaining money for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to Defendants' practices alleged in the Complaint. Any money not used for such equitable relief is to be deposited to the U.S. Treasury as disgorgement. Defendants have no right to challenge any actions the Commission or its representatives may take pursuant to this Subsection.

IV.

TURNOVER OF ASSETS HELD BY THIRD PARTIES

IT IS FURTHER ORDERED that, in order to partially satisfy the monetary judgment set forth in Section III above, any financial institution, business entity, or person that holds, controls, or maintains custody of any account or asset of any Defendant, or any account or asset held on behalf of, or for the benefit of, any Defendant, or any account or asset frozen pursuant to (a) the *Ex Parte* Temporary Restraining Order with Asset Freeze, Other Equitable Relief, and Order to Show Cause Why a Preliminary Injunction Should Not Issue ("TRO"), entered in this matter on March 10, 2015, and/or (b) the Preliminary Injunction, entered in this matter on March 24, 2015, shall turn over such account or asset to the Commission, by wire transfer pursuant to directions provided by counsel for the Commission, or as otherwise agreed to in writing by

counsel for the Commission, within ten (10) days of receiving notice of this Order by any means, including, but not limited to, via facsimile.

V.

DISPOSITION OF UNCASHED CHECKS

IT IS FURTHER ORDERED that Defendants waive and release all rights, claims, and interests in all uncashed checks and other negotiable instruments previously and hereafter sent by consumers in response to Defendants' invoices and/or collection activities related to business directories and/or listings in business directories. Said uncashed checks and negotiable instruments, held by the Commission pursuant to the TRO and Preliminary Injunction issued in this action, shall not be cashed, but shall be returned to their makers by the Commission or its agent; and the Commission or its agent is authorized for this purpose to open any mail addressed to any Defendant that is or has been forwarded to the Commission and to dispose of such mail as the Commission, in its sole discretion, determines to be appropriate. In the event that the makers of the uncashed checks or negotiable instruments cannot be located, or the Commission, in its sole discretion, determines that the return of checks or negotiable instruments is otherwise impracticable, the Commission or its agent shall destroy the checks or negotiable instruments.

Third parties receiving any such additional uncashed checks and negotiable instruments on behalf of any Defendant, shall, after receiving notice of this Order, forward such additional uncashed checks and negotiable instruments by overnight courier to: Federal Trade Commission, Midwest Region, 55 West Monroe Street, Suite 1825, Chicago, Illinois 60603, or as otherwise agreed to in writing by counsel for the Commission. The Commission shall dispose of any such additional uncashed checks and negotiable instruments pursuant to this Section.

VI.

PROHIBITIONS REGARDING CUSTOMER INFORMATION

IT IS FURTHER ORDERED that Defendants, Defendants' officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, are permanently restrained and enjoined from directly or indirectly:

A. Disclosing, selling, renting, leasing, transferring, using, or benefiting from customer information, including the name, address, telephone number, email address, social security number, other identifying information, or any data that enables access to a customer's account (including a credit card, bank account, or other financial account), that any Defendant obtained prior to entry of this Order in connection with the advertising, marketing, promotion, offering for sale, or sale of business directory listings; and

B. Failing to destroy such customer information in all forms in their possession, custody, or control within thirty (30) days after receipt of written direction to do so from a representative of the Commission.

Provided, however, that customer information need not be destroyed, and may be disclosed, to the extent requested by a government agency or required by a law, regulation, or court order.

VII.

PROHIBITION ON COLLECTING ON ACCOUNTS

IT IS FURTHER ORDERED that Defendants, Defendants' officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, are permanently

restrained and enjoined from attempting to collect or collecting payment for any listing in any business directory, and from selling, assigning, or otherwise transferring any right to collect payment for any listing in any business directory.

Any other person who purportedly has purchased, been assigned, or otherwise received from any Defendant the right to collect payment for any listing in any business directory shall similarly be prohibited from attempting to collect or collecting payment for such listings if such person has actual notice of this Order.

VIII.

ORDER ACKNOWLEDGMENTS

IT IS FURTHER ORDERED that Defendants obtain acknowledgments of receipt of this Order:

A. Each Defendant, within seven (7) days of entry of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.

B. For five (5) years after entry of this Order, each Individual Defendant for any business that such Defendant, individually or collectively with any other Defendant, is the majority owner or controls directly or indirectly, and each Corporate Defendant, must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees, agents, and representatives who participate in conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in structure as set forth in the Section titled Compliance Reporting. Delivery must occur within seven (7) days of entry of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.

C. From each individual or entity to which a Defendant delivered a copy of this Order, that Defendant must obtain, within thirty (30) days, a signed and dated acknowledgment of receipt of this Order.

IX.

COMPLIANCE REPORTING

IT IS FURTHER ORDERED that Defendants make timely submissions to the Commission:

A. One year after entry of this Order, each Defendant must submit a compliance report, sworn under penalty of perjury:

1. Each Defendant must: (a) identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission may use to communicate with Defendant; (b) identify all of that Defendant's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the goods and services offered, the means of advertising, marketing, and sales, and the involvement of any other Defendant (which Individual Defendants must describe if they know or should know due to their own involvement); (d) describe in detail whether and how that Defendant is in compliance with each Section of this Order; and (e) provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission.

2. Additionally, each Individual Defendant must: (a) identify all telephone numbers and all physical, postal, email and Internet addresses, including all residences; (b) identify all business activities, including any business for which such Defendant performs services whether as an employee or otherwise and any entity in which such Defendant has any

ownership interest; and (c) describe in detail such Defendant's involvement in each such business, including title, role, responsibilities, participation, authority, control, and any ownership.

B. For twenty (20) years after entry of this Order, each Defendant must submit a compliance notice, sworn under penalty of perjury, within fourteen (14) days of any change in the following:

1. Each Defendant must report any change in: (a) any designated point of contact; or (b) the structure of any Corporate Defendant or any entity that Defendant has any ownership interest in or controls directly or indirectly that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.

2. Additionally, each Individual Defendant must report any change in: (a) name, including aliases or fictitious name, or residence address; or (b) title or role in any business activity, including any business for which such Defendant performs services whether as an employee or otherwise and any entity in which such Defendant has any ownership interest, and identify the name, physical address, and any Internet address of the business or entity.

C. Each Defendant must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against such Defendant within 14 (fourteen) days of its filing.

D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: "I declare under penalty of perjury under the laws of the United States of America

that the foregoing is true and correct. Executed on: _____” and supplying the date, signatory’s full name, title (if applicable), and signature.

E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: *FTC v. American Yellow Browser, Inc.*, FTC Matter No. X150026.

X.

RECORDKEEPING

IT IS FURTHER ORDERED that Defendants must create certain records for twenty (20) years after entry of the Order, and retain each such record for five (5) years. Specifically, Corporate Defendants and each Individual Defendant for any business that such Defendant, individually or collectively with any other Defendant, is a majority owner or controls directly or indirectly, must create and retain the following records:

- A. Accounting records showing the revenues from all goods or services sold;
- B. Personnel records showing, for each person providing services, whether as an employee or otherwise, that person’s: name; addresses; telephone numbers; job title or position; dates of service; and (if applicable) the reason for termination;
- C. Records of all consumer complaints and refund requests, whether received directly or indirectly, such as through a third party, and any response;
- D. All records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission; and

- E. A copy of each unique advertisement or other marketing material.

XI.

COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring Defendants' compliance with this Order and any failure to transfer any assets as required by this Order:

A. Within 14 (fourteen) days of receipt of a written request from a representative of the Commission, each Defendant must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury; appear for depositions; and produce documents for inspection and copying. The Commission is also authorized to obtain discovery, without further leave of court, using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.

B. For matters concerning this Order, the Commission is authorized to communicate directly with each Defendant. Defendant must permit representatives of the Commission to interview any employee or other person affiliated with any Defendant who has agreed to such an interview. The person interviewed may have counsel present.

C. The Commission may use all other lawful means, including posing, through its representatives as consumers, suppliers, or other individuals or entities, to Defendants or any individual or entity affiliated with Defendants, without the necessity of identification or prior notice. Nothing in this Order limits the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

D. Upon written request from a representative of the Commission, any consumer reporting agency must furnish consumer reports concerning Individual Defendants, pursuant to Section 604(a)(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(a)(1).

XII.

LIFTING OF ASSET FREEZE

IT IS FURTHER ORDERED that the freeze on the assets of Defendants shall remain in effect until the Commission has received the total amount required by Section III above, *provided, however,* that Defendants may transfer funds to the extent necessary to make all payments required by Section III. Upon payment to the Commission of the total amount required by Section III above, the freeze against the assets of Defendants shall be lifted permanently.

XIII.

RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court retains jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

SO ORDERED this ____ day of _____, 2015.

Honorable Charles R. Norgle, Sr.
United States District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FEDERAL TRADE COMMISSION,)	
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Plaintiff,)	Case No. 15-cv-2047
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v.)	Judge Norgle
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AMERICAN YELLOW BROWSER, INC.,)	Magistrate Judge Cole
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Defendants.)	

**DEFAULT JUDGMENT AND ORDER FOR PERMANENT
INJUNCTION AND MONETARY RELIEF**

Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), filed its Complaint for Permanent Injunction and Other Equitable Relief (“Complaint”) in this matter pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b). The FTC now having filed its Motion for Default Judgment and Order for Permanent Injunction and Monetary Relief (“Motion”), and the Court having considered the FTC’s Motion, and supporting exhibits, and the entire record, the FTC’s Motion is hereby granted, and **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** as follows:

FINDINGS

1. This is an action by the Commission instituted under Sections 5(a) and 13(b) of the FTC Act, 15 U.S.C. §§ 45(a) and 53(b). The Complaint seeks permanent injunctive relief against Defendants in connection with the marketing, promotion, offering for sale, or sale of business directory listings. Pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), the Commission has the authority to seek the relief contained herein.

2. This Court has jurisdiction over the subject matter of this case and personal jurisdiction over the parties hereto.

3. The Commission's Complaint states claims upon which relief may be granted under Sections 5(a) and 13(b) of the FTC Act, 15 U.S.C. §§ 45(a) and 53(b).

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

5. The activities of Defendants are "in or affecting commerce" as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

6. Defendants were properly served with the Summons and Complaint in this matter. All Defendants thereafter failed to file any responsive pleading as required by Rule 12(a) of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 12(a). On August 21, 2015, the Court entered an order of default as to all Defendants.

7. The factual allegations in the Commission's Complaint are taken as true against Defendants. Those allegations and the evidence supporting them establish that Defendants violated Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

8. The Court now finds that, in connection with the marketing, promotion, offering for sale, or sale of business directory listings, Defendants have violated Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), by falsely representing, directly or indirectly, expressly or by implication, that consumers have agreed to purchase a listing in Defendants' business directory.

9. The Court further finds that, in connection with the marketing, promotion, offering for sale, or sale of business directory listings, Defendants have violated Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), by falsely representing, directly or indirectly, expressly or by

implication, that consumers owe money to Defendants for a listing in Defendants' business directory.

10. It is proper to enter a permanent injunction to prevent a recurrence of Defendants' violations of the FTC Act, 15 U.S.C. § 45, and to enter equitable monetary relief against Defendants.

11. Defendants' net sales (total sales minus refunds, returns, and chargebacks) amount to at least one million two hundred forty-one thousand seven hundred forty United States Dollars ("USD") (\$1,241,740 USD) from the conduct alleged in the Complaint.

12. The Commission is therefore entitled to equitable monetary relief against Defendants in the amount of one million two hundred forty-one thousand seven hundred forty USD (\$1,241,740 USD), for which Defendants are jointly and severally liable.

13. This Order is in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law.

14. Entry of this Order is in the public interest.

DEFINITIONS

For purposes of this Order, the following definitions apply:

1. "**Consumer**" includes any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.

2. "**Corporate Defendants**" means American Yellow Browser, Inc., American Yellow Group Inc., Distribution H.E.P. Inc., also doing business as American Yellow Distribution and Medical Yellow Directories Inc., Official Yellow Guide Inc., Publication A.A.P. Inc., also doing business as All American Pages and Official Yellow Guide, Publication A.Y.B. Inc., also doing business as American Yellow Browser Inc., American Yellow Group

Inc., and All American Pages Inc., and Publications A.Y.D. Inc., and their successors and assigns, as well as any fictitious business entities or business names created or used by these entities, or any of them.

3. “**Defendants**” means all of the Individual Defendants and the Corporate Defendants, individually, collectively, or in any combination.

4. “**Individual Defendants**” means Ivan Chernev and German Lebedev, and by whatever other names each may be known.

5. “**Person**” or “**persons**” includes a natural person, an organization or other legal entity, including a corporation, partnership, sole proprietorship, limited liability company, association, cooperative, or any other group or combination acting as an entity.

6. “**Plaintiff**” means the Federal Trade Commission

ORDER

I.

BAN ON CERTAIN ACTIVITIES

IT IS ORDERED that Defendants, whether acting directly or indirectly, are permanently restrained and enjoined from engaging in, participating in, or assisting others in the advertising, marketing, promotion, offering for sale, or sale of business directories and/or listings in business directories in any format.

II.

PROHIBITED BUSINESS PRACTICES

IT IS FURTHER ORDERED that Defendants, Defendants’ officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the

advertising, marketing, promotion, offering for sale, or sale of any good or service, are permanently restrained and enjoined from misrepresenting, or assisting others in misrepresenting, expressly or by implication, any material fact, including, but not limited to:

- A. That consumers have agreed to purchase a good or service from Defendants;
- B. That consumers owe money to Defendants for any good or service;
- C. The nature of Defendants' relationship with consumers, and the purpose of their communication with consumers;
- D. The total cost to purchase, receive, or use the good or service;
- E. Any material restrictions, limitations, or conditions to purchase, receive, or use the good or service;
- F. Any material aspect of the performance, efficacy, nature, or central characteristics of the good or service; or
- G. Any material aspect of the nature or terms of a refund, cancellation, exchange, or repurchase policy for the good or service.

III.

MONETARY JUDGMENT

IT IS FURTHER ORDERED that:

- A. Judgment in the amount of one million two hundred forty-one thousand seven hundred forty United States Dollars (\$1,241,740 USD) is entered in favor of the Commission against Defendants, jointly and severally, as equitable monetary relief.
- B. Defendants are ordered to pay to the Commission one million two hundred forty-one thousand seven hundred forty United States Dollars (\$1,241,740 USD). Such payment must

be made within seven (7) days of entry of this Order by electronic funds transfer in accordance with instructions previously provided by a representative of the Commission.

C. All money paid to the Commission pursuant to this Order may be deposited into a fund administered by the Commission or its designee to be used for equitable relief, including consumer redress and any attendant expenses for the administration of any redress fund. If a representative of the Commission decides that direct redress to consumers is wholly or partially impracticable or money remains after redress is completed, the Commission may apply any remaining money for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to Defendants' practices alleged in the Complaint. Any money not used for such equitable relief is to be deposited to the U.S. Treasury as disgorgement. Defendants have no right to challenge any actions the Commission or its representatives may take pursuant to this Subsection.

IV.

TURNOVER OF ASSETS HELD BY THIRD PARTIES

IT IS FURTHER ORDERED that, in order to partially satisfy the monetary judgment set forth in Section III above, any financial institution, business entity, or person that holds, controls, or maintains custody of any account or asset of any Defendant, or any account or asset held on behalf of, or for the benefit of, any Defendant, or any account or asset frozen pursuant to (a) the *Ex Parte* Temporary Restraining Order with Asset Freeze, Other Equitable Relief, and Order to Show Cause Why a Preliminary Injunction Should Not Issue ("TRO"), entered in this matter on March 10, 2015, and/or (b) the Preliminary Injunction, entered in this matter on March 24, 2015, shall turn over such account or asset to the Commission, by wire transfer pursuant to directions provided by counsel for the Commission, or as otherwise agreed to in writing by

counsel for the Commission, within ten (10) days of receiving notice of this Order by any means, including, but not limited to, via facsimile.

V.

DISPOSITION OF UNCASHED CHECKS

IT IS FURTHER ORDERED that Defendants waive and release all rights, claims, and interests in all uncashed checks and other negotiable instruments previously and hereafter sent by consumers in response to Defendants' invoices and/or collection activities related to business directories and/or listings in business directories. Said uncashed checks and negotiable instruments, held by the Commission pursuant to the TRO and Preliminary Injunction issued in this action, shall not be cashed, but shall be returned to their makers by the Commission or its agent; and the Commission or its agent is authorized for this purpose to open any mail addressed to any Defendant that is or has been forwarded to the Commission and to dispose of such mail as the Commission, in its sole discretion, determines to be appropriate. In the event that the makers of the uncashed checks or negotiable instruments cannot be located, or the Commission, in its sole discretion, determines that the return of checks or negotiable instruments is otherwise impracticable, the Commission or its agent shall destroy the checks or negotiable instruments.

Third parties receiving any such additional uncashed checks and negotiable instruments on behalf of any Defendant, shall, after receiving notice of this Order, forward such additional uncashed checks and negotiable instruments by overnight courier to: Federal Trade Commission, Midwest Region, 55 West Monroe Street, Suite 1825, Chicago, Illinois 60603, or as otherwise agreed to in writing by counsel for the Commission. The Commission shall dispose of any such additional uncashed checks and negotiable instruments pursuant to this Section.

VI.

PROHIBITIONS REGARDING CUSTOMER INFORMATION

IT IS FURTHER ORDERED that Defendants, Defendants' officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, are permanently restrained and enjoined from directly or indirectly:

A. Disclosing, selling, renting, leasing, transferring, using, or benefiting from customer information, including the name, address, telephone number, email address, social security number, other identifying information, or any data that enables access to a customer's account (including a credit card, bank account, or other financial account), that any Defendant obtained prior to entry of this Order in connection with the advertising, marketing, promotion, offering for sale, or sale of business directory listings; and

B. Failing to destroy such customer information in all forms in their possession, custody, or control within thirty (30) days after receipt of written direction to do so from a representative of the Commission.

Provided, however, that customer information need not be destroyed, and may be disclosed, to the extent requested by a government agency or required by a law, regulation, or court order.

VII.

PROHIBITION ON COLLECTING ON ACCOUNTS

IT IS FURTHER ORDERED that Defendants, Defendants' officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, are permanently

restrained and enjoined from attempting to collect or collecting payment for any listing in any business directory, and from selling, assigning, or otherwise transferring any right to collect payment for any listing in any business directory.

Any other person who purportedly has purchased, been assigned, or otherwise received from any Defendant the right to collect payment for any listing in any business directory shall similarly be prohibited from attempting to collect or collecting payment for such listings if such person has actual notice of this Order.

VIII.

ORDER ACKNOWLEDGMENTS

IT IS FURTHER ORDERED that Defendants obtain acknowledgments of receipt of this Order:

A. Each Defendant, within seven (7) days of entry of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.

B. For five (5) years after entry of this Order, each Individual Defendant for any business that such Defendant, individually or collectively with any other Defendant, is the majority owner or controls directly or indirectly, and each Corporate Defendant, must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees, agents, and representatives who participate in conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in structure as set forth in the Section titled Compliance Reporting. Delivery must occur within seven (7) days of entry of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.

C. From each individual or entity to which a Defendant delivered a copy of this Order, that Defendant must obtain, within thirty (30) days, a signed and dated acknowledgment of receipt of this Order.

IX.

COMPLIANCE REPORTING

IT IS FURTHER ORDERED that Defendants make timely submissions to the Commission:

A. One year after entry of this Order, each Defendant must submit a compliance report, sworn under penalty of perjury:

1. Each Defendant must: (a) identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission may use to communicate with Defendant; (b) identify all of that Defendant's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the goods and services offered, the means of advertising, marketing, and sales, and the involvement of any other Defendant (which Individual Defendants must describe if they know or should know due to their own involvement); (d) describe in detail whether and how that Defendant is in compliance with each Section of this Order; and (e) provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission.

2. Additionally, each Individual Defendant must: (a) identify all telephone numbers and all physical, postal, email and Internet addresses, including all residences; (b) identify all business activities, including any business for which such Defendant performs services whether as an employee or otherwise and any entity in which such Defendant has any

ownership interest; and (c) describe in detail such Defendant's involvement in each such business, including title, role, responsibilities, participation, authority, control, and any ownership.

B. For twenty (20) years after entry of this Order, each Defendant must submit a compliance notice, sworn under penalty of perjury, within fourteen (14) days of any change in the following:

1. Each Defendant must report any change in: (a) any designated point of contact; or (b) the structure of any Corporate Defendant or any entity that Defendant has any ownership interest in or controls directly or indirectly that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.

2. Additionally, each Individual Defendant must report any change in: (a) name, including aliases or fictitious name, or residence address; or (b) title or role in any business activity, including any business for which such Defendant performs services whether as an employee or otherwise and any entity in which such Defendant has any ownership interest, and identify the name, physical address, and any Internet address of the business or entity.

C. Each Defendant must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against such Defendant within 14 (fourteen) days of its filing.

D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: "I declare under penalty of perjury under the laws of the United States of America

that the foregoing is true and correct. Executed on: _____” and supplying the date, signatory’s full name, title (if applicable), and signature.

E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: *FTC v. American Yellow Browser, Inc.*, FTC Matter No. X150026.

X.

RECORDKEEPING

IT IS FURTHER ORDERED that Defendants must create certain records for twenty (20) years after entry of the Order, and retain each such record for five (5) years. Specifically, Corporate Defendants and each Individual Defendant for any business that such Defendant, individually or collectively with any other Defendant, is a majority owner or controls directly or indirectly, must create and retain the following records:

- A. Accounting records showing the revenues from all goods or services sold;
- B. Personnel records showing, for each person providing services, whether as an employee or otherwise, that person’s: name; addresses; telephone numbers; job title or position; dates of service; and (if applicable) the reason for termination;
- C. Records of all consumer complaints and refund requests, whether received directly or indirectly, such as through a third party, and any response;
- D. All records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission; and

- E. A copy of each unique advertisement or other marketing material.

XI.

COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring Defendants' compliance with this Order and any failure to transfer any assets as required by this Order:

A. Within 14 (fourteen) days of receipt of a written request from a representative of the Commission, each Defendant must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury; appear for depositions; and produce documents for inspection and copying. The Commission is also authorized to obtain discovery, without further leave of court, using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.

B. For matters concerning this Order, the Commission is authorized to communicate directly with each Defendant. Defendant must permit representatives of the Commission to interview any employee or other person affiliated with any Defendant who has agreed to such an interview. The person interviewed may have counsel present.

C. The Commission may use all other lawful means, including posing, through its representatives as consumers, suppliers, or other individuals or entities, to Defendants or any individual or entity affiliated with Defendants, without the necessity of identification or prior notice. Nothing in this Order limits the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

D. Upon written request from a representative of the Commission, any consumer reporting agency must furnish consumer reports concerning Individual Defendants, pursuant to Section 604(a)(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(a)(1).

XII.

LIFTING OF ASSET FREEZE

IT IS FURTHER ORDERED that the freeze on the assets of Defendants shall remain in effect until the Commission has received the total amount required by Section III above, *provided, however,* that Defendants may transfer funds to the extent necessary to make all payments required by Section III. Upon payment to the Commission of the total amount required by Section III above, the freeze against the assets of Defendants shall be lifted permanently.

XIII.

RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court retains jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

SO ORDERED this 20 day of NOV, 2015.



Honorable Charles R. Norgle, Sr.
United States District Judge