

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA
c/o Department of Justice
Washington, D.C. 20530,

Plaintiff,

v.

AHMET H. OKUMUS
767 Third Avenue, 35th Floor
New York, NY 10017

Defendant.

Civil Action No.

COMPLAINT FOR CIVIL PENALTIES FOR FAILURE TO COMPLY
WITH THE PREMERGER REPORTING AND WAITING REQUIREMENTS
OF THE HART-SCOTT RODINO ACT

The United States of America, Plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States and at the request of the Federal Trade Commission, brings this civil antitrust action to obtain monetary relief in the form of civil penalties against Defendant Ahmet H. Okumus (“Okumus”). Plaintiff alleges as follows:

NATURE OF THE ACTION

1. Okumus violated the notice and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. § 18a (“HSR Act” or “Act”), with respect to the acquisition of voting securities of Web.com Group, Inc. (“Web.com”).

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to Section 7A(g) of the Clayton Act, 15 U.S.C. § 18a(g), and pursuant to 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355 and over the Defendant by virtue of Defendant's consent, in the Stipulation relating hereto, to the maintenance of this action and entry of the Final Judgment in this District.

3. Venue is properly based in this District by virtue of Defendant's consent, in the Stipulation relating hereto, to the maintenance of this action and entry of the Final Judgment in this District.

THE DEFENDANT

4. Defendant Okumus is a natural person with his principal office and place of business at 767 Third Avenue, 35th Floor, New York, NY 10017. Okumus is engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. § 12, and Section 7A(a)(1) of the Clayton Act, 15 U.S.C. § 18a(a)(1). At all times relevant to this complaint, Okumus had sales or assets in excess of \$156.3 million.

OTHER ENTITIES

5. Web.com is a corporation organized under the laws of Delaware with its principal place of business at 12808 Gran Bay Parkway West, Jacksonville, FL 32258. Web.com is engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. § 12, and Section 7A(a)(1) of the Clayton Act, 15 U.S.C. § 18a(a)(1). At all times relevant to this complaint, Web.com had sales or assets in excess of \$15.6 million.

THE HART-SCOTT-RODINO ACT AND RULES

6. The HSR Act requires certain acquiring persons and certain persons whose voting securities or assets are acquired to file notifications with the federal antitrust agencies and to observe a waiting period before consummating certain acquisitions of voting securities or assets. 15 U.S.C. § 18a(a) and (b). These notification and waiting period requirements apply to acquisitions that meet the HSR Act's thresholds. As of February 1, 2001, the size of transaction threshold was \$50 million. In addition, there is a separate filing requirement for transactions in which the acquirer will hold voting securities in excess of \$100 million, and for transactions in which the acquirer will hold voting securities in excess of \$500 million. With respect to the size of person thresholds, the HSR Act requires one person involved in the transaction to have sales or assets in excess of \$10 million, and the other person to have sales or assets in excess of \$100 million. Since 2004, the size of transaction and size of person thresholds have been adjusted annually.

7. The HSR Act's notification and waiting period requirements are intended to give the federal antitrust agencies prior notice of, and information about, proposed transactions. The waiting period is also intended to provide the federal antitrust agencies with an opportunity to investigate a proposed transaction and to determine whether to seek an injunction to prevent the consummation of a transaction that may violate the antitrust laws.

8. Section (c)(9) of the HSR Act, 15 U.S.C. § 18a(c)(9), exempts from the requirements of the HSR Act acquisitions of voting securities made solely for the purpose of investment if, as a result of the acquisition, the securities acquired or held do not exceed ten percent of the outstanding voting securities of the issuer.

9. Pursuant to Section (d)(2) of the HSR Act, 15 U.S.C. § 18a(d)(2), rules were promulgated to carry out the purposes of the HSR Act. 16 C.F.R. §§ 801-03 (“HSR Rules”). The HSR Rules, among other things, define terms contained in the HSR Act.

10. Pursuant to section 801.13(a)(1) of the HSR Rules, 16 C.F.R. § 801.13(a)(1), “all voting securities of [an] issuer which will be held by the acquiring person after the consummation of an acquisition” – including any held before the acquisition – are deemed held “as a result of” the acquisition at issue.

11. Pursuant to sections 801.13(a)(2) and 801.10(c)(1) of the HSR Rules, 16 C.F.R. § 801.13(a)(2) and § 801.10(c)(1), the value of voting securities already held is the market price, defined to be the lowest closing price within 45 days prior to the subsequent acquisition.

12. Section 802.21 of the HSR Rules, 16 C.F.R. § 802.21, provides that once a person has filed under the HSR Act and the waiting period has expired, the person can acquire additional voting securities of the issuer without making a new filing for five years from the expiration of the waiting period, so long as the holdings do not exceed a higher threshold than was indicated in the filing.

13. Section 7A(g)(1) of the Clayton Act, 15 U.S.C. § 18a(g)(1), provides that any person, or any officer, director, or partner thereof, who fails to comply with any provision of the HSR Act is liable to the United States for a civil penalty for each day during which such person is in violation. Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. 114-74, § 701 (further amending the Federal Civil Penalties Inflation Adjustment Act of 1990), and Federal Trade Commission Rule 1.98, 16 C.F.R. § 1.98, 81 Fed. Reg. 42,476 (June 30, 2016), the maximum amount of civil penalty is \$40,000 per day.

DEFENDANT'S PRIOR VIOLATION OF THE HSR ACT

14. On September 11, 2014, Okumus acquired voting securities of Web.com. As a result of this acquisition, Okumus held approximately 13.5% of the voting securities of Web.com. Okumus did not file under the HSR Act because he was relying on the exemption for acquisitions solely for the purpose of investment. However, that exemption is limited to acquisitions which result in holding 10% or less of the voting securities of the issuer. Accordingly, Okumus was required to file under the HSR Act prior to acquiring Web.com voting securities on September 11, 2014. Okumus continued to acquire voting securities of Web.com through November 6, 2014.

15. On November 21, 2014, Okumus made a corrective filing under the HSR Act for the acquisitions of Web.com voting securities. In a letter accompanying the corrective filing, Okumus acknowledged that the transaction was reportable under the HSR Act, but asserted that the failure to file and observe the waiting period was inadvertent.

16. On December 31, 2014, the Premerger Notification Office of the Federal Trade Commission sent a letter to Okumus indicating that it would not recommend a civil penalty action regarding the September 11, 2014, Web.com acquisition. The letter advised, however, that Okumus "still must bear responsibility for compliance with the Act" and was "accountable for instituting an effective program to ensure full compliance with the Act's requirements."

DEFENDANT'S VIOLATION OF THE HSR ACT

17. In his corrective HSR Act filing for the 2014 Web.com acquisitions, Okumus filed at the \$50 million threshold. After the expiration of the waiting period, Okumus was permitted

under the HSR Act to acquire additional voting securities of Web.com without making another HSR Act filing so long as he did not exceed the \$100 million threshold, as adjusted. As of February 25, 2016, the adjusted \$100 million threshold was \$156.3 million.

18. On June 2, 2016, Okumus began acquiring additional voting securities of Web.com. Okumus continued to acquire additional voting securities of Web.com through June 27, 2016.

19. On June 27, 2016, Okumus acquired 236,589 voting securities of Web.com. As a result of this acquisition, Okumus held voting securities of Web.com valued in excess of the \$156.3 million threshold then in effect.

20. Although required to do so, Okumus did not file under the HSR Act or observe the HSR Act's waiting period prior to completing the June 27, 2016, transaction.

21. On July 14, 2016, Okumus sold 33,200 voting securities of Web.com. As a result of this sale, Okumus no longer held voting securities of Web.com valued in excess of the \$156.3 million HSR Act threshold.

22. Okumus was in continuous violation of the HSR Act from June 27, 2016, when he acquired the Web.com voting securities valued in excess of the HSR Act's then applicable \$156.3 filing threshold, through July 14, 2016, when he no longer held voting securities of Web.com valued in excess of \$156.3 million.

REQUESTED RELIEF

WHEREFORE, Plaintiff requests:

a. That the Court adjudge and decree that Defendant's acquisition of Web.com voting securities on June 27, 2016, was a violation of the HSR Act, 15 U.S.C. § 18a; and that Defendant was in violation of the HSR Act each day from June 27, 2016, through July 14, 2016;

b. That the Court order Defendant to pay to the United States an appropriate civil penalty as provided by the HSR Act, 15 U.S.C. § 18a(g)(1), and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. 114-74, § 701 (further amending the Federal Civil Penalties Inflation Adjustment Act of 1990), and Federal Trade Commission Rule 1.98, 16 C.F.R. § 1.98, 81 Fed. Reg. 42,476 (June 30, 2016);

c. That the Court order such other and further relief as the Court may deem just and proper; and

d. That the Court award Plaintiff its costs of this suit.

Dated: _____

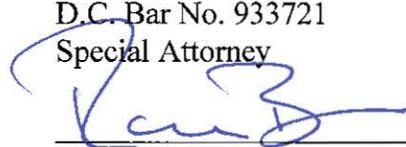
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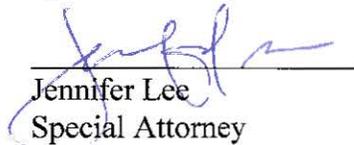
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