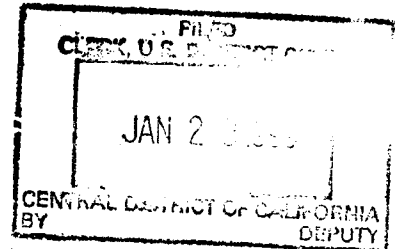


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8 Attorneys for Plaintiff



10 UNITED STATES DISTRICT COURT FOR THE
 11 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

13 FEDERAL TRADE COMMISSION,)
)
 14 Plaintiff,)
)
 15 v.)
)
 16 J.K. PUBLICATIONS, INC., a Nevada)
 corporation,)
 17)
 KENNETH H. TAVES,)
 18 a/k/a Ken Till, individually,)
 and as an officer of J.K.)
 19 Publications, Inc., also)
 d/b/a Netfill, netfill.com,)
 20 xbc.com, N-Bill, Online)
 Billing, Assist Online,)
 21 Herbal Care, Discreet Bill,)
 KULM Consulting Group, TAL)
 22 Services)
)
 23 TERESA CALLEI TAVES, individually,)
 and as an officer of J.K.)
 24 Publications, Inc., also)
 d/b/a Netfill, netfill.com)
 25 N-Bill, Herbal Care)
)
 26 GARY NEAL MITTMAN, individually,)
 and as an officer of)
 27 Adult Banc, Inc., also d/b/a)
 Adult Bank, netfill.com,)
 28 adultbank.com)

Civil Action
 No. 99-00044 ABC (AJWx)

AMENDED COMPLAINT FOR
 INJUNCTIVE AND OTHER
 RELIEF

1 DENNIS RAPPAPORT, individually,)
2 and as an officer of TAL)
3 Services, Inc., Adult Banc)
4 Inc., and Discreet Bill,)
5 also d/b/a Adult Bank)
6 MAURICE O'BANNON, individually,)
7 and as an officer of TAL)
8 Services, Inc., and MJD)
9 Service Corp., also d/b/a)
10 MJD Enterprises and Adult)
11 Bank)
12 MJD SERVICE CORP.,)
13 a Nevada corporation,)
14 TAL SERVICES, INC.,)
15 a Nevada corporation,)
16 DISCREET BILL, INC.)
17 a Nevada corporation,)
18 ADULT BANC, INC.)
19 a California corporation,)
20 HERBAL CARE, INC.)
21 a California corporation,)
22 Defendants.)
23)
24)
25)
26)
27)
28)

17 Plaintiff, the Federal Trade Commission ("FTC" or "the
18 Commission"), for its amended complaint alleges as follows:
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21 **JURISDICTION AND VENUE**

- 22 1. This Court has jurisdiction over this matter pursuant to
23 28 U.S.C. §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a) and
24 53(b).
25 2. Venue in the United States District Court for the Central
26 District of California is proper under 28 U.S.C. § 1391(b) and (c),
27 and 15 U.S.C. §§ 53(b).

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PLAINTIFF

3. Plaintiff, the Federal Trade Commission, is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41 et seq. The Commission is charged, inter alia, with enforcement of Section 5(a) of the Federal Trade Commission Act ("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 in order to secure such equitable relief as may be appropriate in each case. 15 U.S.C. §§ 53(b), 56(a)(2).

4. The Commission brings this action under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), to secure preliminary and permanent injunctive relief, rescission of contracts, restitution, disgorgement, and other equitable relief for defendants' deceptive and unfair acts and practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

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DEFENDANTS

5. Defendant J.K. Publications, Inc. ("J.K. Publications") is a Nevada corporation. J.K. Publications was incorporated in 1995, and transacts business in the Central District of California. J.K. Publications does business as "Netfill" in California. J.K. Publications does business as "xbc.com." J.K. Publications lists its principal address as 3305 W. Spring Mountain Road #60-A, Las Vegas, Nevada 89102.

6. Defendant Kenneth H. Taves is a resident of California. His principal address is 19158 Pacific Coast Highway, Malibu,

1 California 90265. Mr. Taves does business on the Internet as
2 netfill.com. Mr. Taves also does business on the Internet as
3 xbc.com. Mr. Taves does business as "Netfill", "Online Billing",
4 and "N-Bill" in the state of Nevada. Mr. Taves also does business
5 as "Netfill", "Online Billing", "N-Bill" and "Webtel" in California.
6 Mr. Taves also does business in California as the following:
7 "HerbalCare", "Discreet Bill", "Assist Online", "KULM Consulting
8 Group", and "TAL Services, Inc.". Mr. Taves is the president of
9 defendant Herbal Care. Mr. Taves is the secretary and treasurer of
10 defendant J.K. Publications. At all times material to this
11 complaint, acting alone or in concert with others, he has
12 formulated, directed, controlled, or participated in the acts and
13 practices set forth in this complaint. He resides and transacts
14 business within the Central District of California.

15 7. Defendant Teresa Callei Taves is a resident of
16 California. Her principal address is 19158 Pacific Coast Highway,
17 Malibu, CA 90265. Mrs. Taves does business on the Internet as
18 netfill.com. Mrs. Taves does business as business as "Netfill" and
19 "N-Bill" in the state of Nevada. Mrs. Taves also does business as
20 "Netfill", "N-Bill" and "Herbal Care" in California. Mrs. Taves
21 is the president of defendant J.K. Publications. At all times
22 material to this complaint, acting alone or in concert with others,
23 she has formulated, directed, controlled, or participated in the
24 acts and practices set forth in this complaint. She resides and
25 transacts business within the Central District of California.

26 8. Defendant Gary Neal Mittman is a resident of California.
27 His principal address is 309 Broadway Street #17, Venice,
28

1 California 90291. Mr. Mittman is an officer of defendant Adult
2 Banc, Inc. Mr. Mittman also does business on the Internet as
3 gary@netfill.com and gary@adultbank.com. Mr. Mittman also does
4 business as "Adult Bank". At all times material to this complaint,
5 acting alone or in concert with others, he has formulated,
6 directed, controlled, or participated in the acts and practices set
7 forth in this complaint. He resides and transacts business within
8 the Central District of California.

9 9. Defendant Dennis Rappaport is a resident of California.
10 His principal address is 4535 San Blas Avenue, Woodland Hills, CA.
11 Mr. Rappaport is the owner and vice president of defendant Discreet
12 Bill, Inc. Mr. Rappaport is an officer of defendant TAL Services,
13 Inc. Mr. Rappaport is an officer of defendant Adult Banc, Inc.
14 Mr. Rappaport also does business as "Adult Bank". At all times
15 material to this complaint, alone or in concert with others, he has
16 formulated, directed, controlled, or participated in the acts and
17 practices set forth in this complaint. He resides and transacts
18 business within the Central District of California.

19 10. Defendant Maurice O'Bannon is a resident of Nevada. His
20 principal address is 3890 S. Nellis Blvd., Las Vegas, NV 89121.
21 Mr. O'Bannon is president of defendant MJD Service Corp. Mr.
22 O'Bannon is also the president of defendant Discreet Bill, Inc. and
23 the president of defendant TAL Services, Inc. He transacts
24 business within the Central District of California.

25 11. Defendant MJD Service Corp. is a Nevada Corporation. MJD
26 Service Corp. was incorporated in 1998, and transacts business in
27 the Central District of California. MJD Service Corp. does

1 business as "MJD Enterprises". MJD Service Corp. lists its
2 principal address as 5300 W. Sahara Avenue, #101, Las Vegas, Nevada
3 89102.

4 12. Defendant TAL Services, Inc. ("TAL Services") is a Nevada
5 Corporation. TAL Services was incorporated in 1998, and transacts
6 business in the Central District of California. TAL Services lists
7 its principal address as 5300 W. Sahara Avenue, #101, Las Vegas,
8 Nevada 89102.

9 13. Defendant Adult Banc, Inc. ("Adult Banc") is a California
10 corporation. Adult Banc was incorporated in September 1998, and
11 transacts business in the Central District of California. Adult
12 Banc does business as "Adult Bank" and "adultbank.com" in
13 California. Adult Banc lists its principal address as: 23852
14 Pacific Coast Highway, #643, Malibu, California.

15 14. Defendant Discreet Bill, Inc. ("Discreet Bill") is a
16 Nevada corporation. Discreet Bill was incorporated in September
17 1998, and transacts business in the Central District of California.
18 Discreet Bill does business as "N-Bill", "Online Billing" and
19 "Webtel". Discreet Bill lists its principal address as: 5300 W.
20 Sahara Ave., #101, Las Vegas, NV 89146. Discreet Bill does
21 business as "Online Billing" and "N-Bill" in the state of Nevada.

22 15. Defendant Herbal Care, Inc. ("Herbal Care") is a
23 California corporation. Herbal Care was incorporated in 1997, and
24 transacts business in the Central District of California. Herbal
25 Care lists its principal address as 3305 West Spring Mountain Road,
26 #60A, Las Vegas, Nevada 89102.

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COMMERCE

16. At all times material to this complaint, the defendants have maintained a substantial course of trade, advertising, offering, offering for sale, selling, and interstate billing for access to computer-stored images via both the Internet and international and interstate telephone lines, in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS' COURSE OF BUSINESS

17. Since approximately January 1997, defendants have operated web sites on the Internet, including the sites located at netfill.com and xbc.com. The World Wide Web or Web is a system used on the Internet for cross-referencing and retrieving information. A web site is a set of electronic documents, usually a home page and subordinate pages, readily viewable on computer by anyone, with access to the Web and standard software, who searches the Web using relevant key words or who types in the web site's known location or address.

18. Since approximately January, 1998, in the course of running their businesses, defendants, without consumers' authorization, have obtained and continue to obtain consumers' credit and debit card account numbers and cause charges to be posted on, or monies to be withdrawn from, those accounts. Defendants at various times place into the charge or debit card system the following identifiers for those charges or debits:

Netfill-Net Access 800-918-8400 CA;

N-Bill 800-533-0424 NV;

1 MJD Serv. Corp. 800-554-3580 NV;
2 Webtel 702-220-6339 800-462-5294 NV; or
3 TAL Services Inc. 800-554-3580 NV.

4 19. Defendants use the names Netfill, N-Bill, MJD Service
5 Corp., Webtel, and TAL Services and forward mail between various
6 post office boxes and commercial mail drops in California and
7 Nevada to avoid being detected.

8 20. In numerous instances, consumers have never heard or
9 known of Netfill, N-Bill, MJD Service Corp., Webtel or TAL Services
10 until the charges appear on those consumers' account statements.

11 21. In numerous instances, when consumers call the phone
12 numbers indicated in paragraph 18, above, the line is busy or rings
13 without answer despite several attempts.

14 22. On other occasions, when consumers call the phone numbers
15 indicated, the line is answered by a voice recording that, without
16 identifying the owner of the voice recording, requests the caller
17 to enter her credit card number using the keys on her telephone key
18 pad in order to question a bill. Those consumers have no ability
19 to speak to a representative.

20 23. Often, consumers are forced to write their card issuers
21 to challenge the charges or debits on their statements. When those
22 consumers inquire as to the nature of the charge, the card issuers
23 often reply that the charge is for Internet-related service. Many
24 of these consumers either have no Internet access or have never
25 given their card number to any Internet-related business.

26 24. In numerous instances, defendants repeatedly bill
27 consumers over successive months. Unable to contact defendants,
28

1 those consumers ask their card issuers to stop the billing. Card
2 issuers often respond that they cannot stop future charges from
3 appearing on successive bills and tell the consumers to contact the
4 biller directly. Many times, however, the billers have given the
5 card issuer and consumer no identifying information other than the
6 phone numbers indicated in paragraph 18, above.

7 25. Many consumers are thus unable to contact the defendants,
8 and therefore cannot stop future unauthorized charges. In numerous
9 instances, consumers have canceled their card accounts in order to
10 stop future charges.

11 VIOLATIONS OF THE FTC ACT

12 COUNT I

13 26. In numerous instances, in the course of billing,
14 attempting to collect, and collecting money from consumers,
15 defendants represent to consumers, expressly or by implication,
16 that consumers purchased or agreed to purchase goods or services
17 from defendants, and therefore owe money to defendants.

18 27. In truth and in fact, consumers did not purchase or agree
19 to purchase goods or services from defendants, and therefore do not
20 owe money to defendants.

21 28. Therefore, defendants' representations, as set forth in
22 paragraph 26, above, are deceptive, in violation of Section 5 of
23 the FTC Act, 15 U.S.C. §45.

24 COUNT II

25 29. In numerous instances, defendants charge or debit the
26 accounts of consumers.

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1 30. Consumers have not contacted, been contacted by,
2 purchased from, agreed to purchase from, or agreed to be billed by
3 defendants or anyone for whom they purport to bill. Consumers have
4 never heard of Netfill, N-Bill, MJD Service Corp., Webtel or TAL
5 Services prior to receiving their account statements, and many
6 consumers cannot contact defendants before they are billed again.
7 Therefore, consumers cannot reasonably avoid defendants' billing
8 for services or products which consumers did not purchase.

9 31. Defendants' practice of charging and debiting consumers'
10 credit or debit card accounts without authorization causes
11 substantial injury to consumers that is not outweighed by
12 countervailing benefits to consumers or competition.

13 32. Therefore, defendants' practice, as outlined above, is
14 unfair and violates Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

15 **COMMON ENTERPRISE**

16 33. The corporate defendants, individual defendants and the
17 several d/b/a entities have operated as a common business
18 enterprise while engaging in the deceptive and unfair acts and
19 practices alleged above in paragraphs 26 through 32.

20 **CONSUMER INJURY**

21 34. Consumers throughout the United States and in foreign
22 countries have suffered monetary losses as a result of the
23 defendants' unlawful acts or practices. Absent injunctive relief
24 by this Court, defendants are likely to continue to injure
25 consumers and harm the public interest.

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THIS COURT'S POWER TO GRANT RELIEF

35. 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 provision of law enforced by the FTC.

36. 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, the Federal Trade Commission, requests that this Court, as authorized by Section 13(b) of the FTC Act, 15 U.S.C. §§ 53(b), and pursuant to its 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 the defendants from violating the FTC Act, as alleged herein;

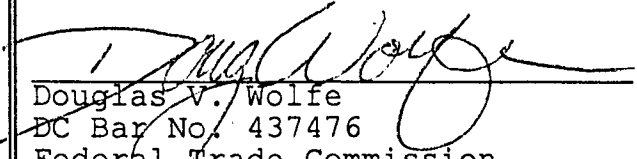
3. Award such relief as the Court finds necessary to redress injury to consumers resulting from the defendants' violations of the FTC Act, including but not limited to, the refund of monies paid, and the disgorgement of ill-gotten monies; and

4. Award plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

1 Date: January 19, 1999

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3 Respectfully Submitted,

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5 Debra A. Valentine
6 General Counsel

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1 Date: _____

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