

Sealed
Public and unofficial staff access
to this instrument are
prohibited by court order.
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

United States Courts
Southern District of Texas
FILED

JUN 12 2006

Michael N. Milby, Clerk

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

WEBSOURCE MEDIA, L.L.C.,

BIZSITEPRO, L.L.C.,

EVERSITES, L.L.C.,

TELSOURCE SOLUTIONS, INC.,

TELSOURCE INTERNATIONAL, INC.,

MARC R. SMITH,

KATHLEEN A. SMALLEY,

KEITH HENDRICK,

STEVEN L. KENNEDY,

JOHN O. RING,

and

JAMES E. MCCUBBIN, JR.,

Defendants.

Civ. No. **H-06-1980**

UNDER SEAL

COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF

Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), for its Complaint alleges:

1. Plaintiff brings this action under Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), to secure a permanent injunction, rescission of contracts, restitution, disgorgement of ill-gotten gains, and other equitable relief against Defendants for engaging in unfair or deceptive acts or practices in connection with the marketing and sale of Internet “website” services in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

JURISDICTION AND VENUE

2. Subject matter jurisdiction is conferred upon this Court by 15 U.S.C. §§ 45(a) and 53(b), and 29 U.S.C. §§ 1331, 1337(a), and 1345.

3. Venue is proper in the Southern District of Texas under 15 U.S.C. § 53(b) and 28 U.S.C. § 1391(b) and (c).

PLAINTIFF

4. Plaintiff Federal Trade Commission is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58. The Commission is charged, *inter alia*, with enforcement of 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 in order to secure such equitable relief as may be appropriate in each case, including restitution for injured consumers. 15 U.S.C. § 53(b).

DEFENDANTS

5. Defendant WebSource Media, L.L.C. (“WebSource”) is a Texas limited liability company with its offices and principal place of business located at 10375 Richmond Avenue, Suite 800, Houston Texas 77042. WebSource does business under various trade names including

WebPoint USA. Defendant WebSource transacts or has transacted business in the Southern District of Texas.

6. Defendant BizSitePro, L.L.C. ("BizSitePro") is a Texas limited liability company with its offices and principal place of business located at 16602 Rose Bay Trail, Cypress, Texas 77429. Defendant BizSitePro transacts or has transacted business in the Southern District of Texas.

7. Defendant Eversites, L.L.C. ("Eversites") is a Texas limited liability company with its offices and principal place of business located at 12438 Pinerock Lane, Houston, Texas 77024. Defendant Eversites transacts or has transacted business in the Southern District of Texas.

8. Defendant Telsource Solutions, Inc. ("TSI") is a Texas corporation with its offices and principal place of business located at 7447 Harwin Street, Suite 246, Houston, Texas 77036. Defendant TSI transacts or has transacted business in the Southern District of Texas.

9. Defendant Telsource International, Inc. ("TII") is a Texas corporation with its offices and principal place of business located at 7447 Harwin Street, Suite 246, Houston, Texas 77036. Defendant TII transacts or has transacted business in the Southern District of Texas.

10. Defendant Marc R. Smith is or has been a managing member and director of WebSource and owner of BizSitePro. At times material to this complaint, acting alone or in concert with others, he has formulated, directed, controlled, or participated in the acts and practices of Defendants WebSource and BizSitePro, including the various acts and practices set forth in this complaint. Defendant Smith resides in and transacts or has transacted business in the Southern District of Texas.

11. Defendant Kathleen A. Smalley is or has been a vice president, managing member, and director of WebSource. At times material to this complaint, acting alone or in concert with others, she has formulated, directed, controlled, or participated in the acts and practices of Defendant WebSource, including the various acts and practices set forth in this complaint. Defendant Smalley resides in and transacts or has transacted business in the Southern District of Texas.

12. Defendant Keith Hendrick is or has been a managing member and director of WebSource. At times material to this complaint, acting alone or in concert with others, he has formulated, directed, controlled, or participated in the acts and practices of Defendant WebSource, including the various acts and practices set forth in this complaint. Defendant Hendrick resides in and transacts or has transacted business in the Southern District of Texas.

13. Defendant Steven L. Kennedy is or has been a manager of WebSource. At times material to this complaint, acting alone or in concert with others, he has formulated, directed, controlled, or participated in the acts and practices of Defendant WebSource, including the various acts and practices set forth in this complaint. Defendant Kennedy resides in and transacts or has transacted business in the Southern District of Texas.

14. Defendant John O. Ring is or has been a managing member of BizSitePro. He is or has been president and director of TSI and TII. At times material to this complaint, acting alone or in concert with others, he has formulated, directed, controlled, or participated in the acts and practices of Defendants BizSitePro, TSI and TII, including the various acts and practices set forth in this complaint. Defendant Ring resides in and transacts or has transacted business in the Southern District of Texas.

15. Defendant James E. McCubbin, Jr. is or has been a managing member of Eversites. He is or has been secretary and director of TSI and TII. At times material to this complaint, acting alone or in concert with others, he has formulated, directed, controlled, or participated in the acts and practices of Defendants Eversites, TSI and TII, including the various acts and practices set forth in this complaint. Defendant McCubbin resides in and transacts or has transacted business in the Southern District of Texas.

16. The foregoing entities, Defendants WebSource, BizSitePro, Eversites, TSI, and TII, operate a common enterprise to market Internet "website" services to consumers throughout the United States.

COMMERCE

17. 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 ACTIVITIES

18. Defendants, directly or through their representatives, have engaged in a plan, program, or campaign to market Internet website design and hosting to small businesses and non-profit entities nationwide. A "website" is a set of electronic documents, usually a home page and subordinate pages, readily viewable on a personal computer by anyone with access to the Internet, standard software, and knowledge of the website's location or address.

19. Defendants, acting directly or through contract telemarketers, make cold calls to selected small businesses and non-profit entities. During these calls, Defendants frequently talk

with a low level employee, such as a receptionist or counter attendant, who has no authority to bind the business.

20. Defendants ask if the consumer wants to try a website designed by Defendants for 15 days. The consumer is told that there is no charge or obligation. The Defendants tell consumers that the website will be cancelled automatically unless the consumer approves the continuation of the website. In other cases, the Defendants only tell the consumer that they will send the consumer some information about a website designed by Defendants. Most consumers refuse to authorize the website. Others authorize the website, but only for the initial free trial period.

21. Whether or not consumers authorize the Defendants to set up a website, Defendants often place charges on consumers' telephone bills for Defendants' services. Websites that have only been authorized for the free trial period are not automatically canceled. If the consumer does not affirmatively cancel within 15 days, Defendants place charges on their telephone bills. The initial setup fee is currently \$49.99; the monthly charge is an additional \$49.99 per month. Since consumers have not authorized these charges and, therefore, do not expect the charges on their telephone bills, they may pay for several months of service before they are alerted to the problem.

22. Consumers usually are unsuccessful in securing more than a partial refund from Defendants. Consumers usually receive a full refund only when they complain to the Better Business Bureau or telephone companies. Consumers expend a significant amount of time and effort seeking to have the unauthorized charges removed from their telephone bills.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

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

COUNT I

24. In numerous instances, Defendants have caused consumers' telephone accounts to be billed without having previously obtained the consumers' express informed consent.

25. Defendants' practices set forth in Paragraph 24 caused or are likely to cause substantial injury to consumers that is not reasonably avoidable by consumers and is not outweighed by countervailing benefits to consumers or competition.

26. Defendants' practices as alleged in Paragraph 24 are unfair practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT II

27. In numerous instances, Defendants have represented, directly or through third-party telemarketers, expressly or by implication, that the Defendants' free trial website would be cancelled automatically if the consumer did not approve the continuation of the website.

28. In truth and in fact, in numerous of these instances, Defendants' free website was not cancelled automatically if the consumer did not approve the continuation of the website.

29. Therefore, the representations set forth in Paragraph 27 are false and misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

CONSUMER INJURY

30. Small businesses and non-profit entities throughout the United States have suffered substantial monetary loss as a result of Defendants' unlawful acts or practices. In addition, Defendants have been unjustly enriched as a result of their unlawful practices. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

31. 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. The Court, in the exercise of its equitable jurisdiction, may award other 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 this 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, temporary and preliminary injunctions and an order freezing assets;

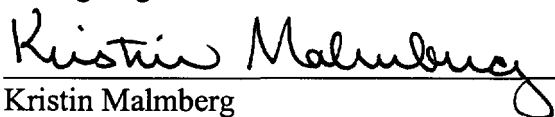
2. Permanently enjoin the Defendants from violating the FTC Act, as alleged herein;
3. Award such equitable relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act, including, but not limited to, rescission of contracts, restitution, and the disgorgement of ill-gotten gains by Defendants; 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.

Dated: June 12, 2006

Respectfully submitted,

WILLIAM BLUMENTHAL
General Counsel

STEVEN E. WEART
Acting Regional Director



Kristin Malmberg
Attorney-In-Charge
Texas Bar Number 12871700
Susan E. Arthur
Attorney
Texas Bar Number 01365300
Eliseo N. Padilla
Attorney
Florida Bar Number 0192929

Attorneys for Plaintiff
Federal Trade Commission
1999 Bryan Street, Suite 2150
Dallas, Texas 75201
(214) 979-9381 (Ms. Malmberg)
(214) 979-9370 (Ms. Arthur)
(214) 979-9382 (Mr. Padilla)
(214) 979-9350 (Office)
(214) 953-3079 (Facsimile)