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14-CV-00838-BCST

AT SEATTLE
CLERK U.S. DISTRICT COURT
BY WESTERN DISTRICT OF WASHINGTON DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

FEDERAL TRADE COMMISSION,

Plaintiff,

vs.

ONLINEYELLOWPAGES.TODAY.COM, INC.;
USYELLOWPAGE.DIRECTORY.COM, INC.;
7703236 CANADA, INC.; 7095333 CANADA,
INC.; and

ONI NATHIFA JULIEN, individually and as an
officer or director of said corporations,

Defendants.

No. **C14-0838RAJ**
COMPLAINT FOR PERMANENT
INJUNCTION AND OTHER EQUITABLE
RELIEF

FILED UNDER SEAL

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

1. The FTC brings this action under Section 13(b) of the Federal Trade Commission Act (FTC Act), 15 U.S.C. §53(b), to obtain temporary, preliminary, and permanent injunctive relief, rescission or reformation of contracts, restitution, the refund of monies paid, disgorgement of ill-gotten monies, and other equitable relief for Defendants' acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

1 **JURISDICTION AND VENUE**

2 2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a),
3 and 1345, and 15 U.S.C. §§ 45(a) and 53(b).

4 3. Venue is proper in this district under 28 U.S.C. § 1391(b)(2), (c)(2), (c)(3), and
5 (d), and 15 U.S.C. § 53(b).

6 **PLAINTIFF**

7 4. The FTC is an independent agency of the United States Government created by
8 statute. 15 U.S.C. §§ 41-58. The FTC enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a),
9 which prohibits unfair or deceptive acts or practices in or affecting commerce.

10 5. The FTC is authorized to initiate federal district court proceedings, by its own
11 attorneys, to enjoin violations of the FTC Act and to secure such equitable relief as may be
12 appropriate in each case, including rescission or reformation of contracts, restitution, the refund
13 of monies paid, and the disgorgement of ill-gotten monies. 15 U.S.C. §§ 53(b) and 56(a)(2)(A).

14 **DEFENDANTS**

15 6. OnlineYellowPagesToday.com, Inc., is a Delaware corporation, with its principal
16 place of business at 1440 Sainte-Catherine West, Suite 421, Montreal, Quebec H3G1R8.
17 OnlineYellowPagesToday.com, Inc., transacts or has transacted business in this district and
18 throughout the United States.

19 7. USYellowPageDirectory.com, Inc., is a Delaware corporation, with its principal
20 place of business at 1440 Sainte-Catherine West, Suite 421, Montreal, Quebec H3G1R8.
21 USYellowPageDirectory.com, Inc., transacts or has transacted business in this district and
22 throughout the United States.

23 8. 7703236 Canada, Inc., also doing business as OnlineYellowPagesToday.com,
24 Target Marketing, and Oniks Media, is a Quebec corporation, with its principal place of business
25 at 1440 Sainte-Catherine West, Suite 421, Montreal, Quebec H3G1R8. 7703236 Canada, Inc.,
26 transacts or has transacted business in this district and throughout the United States.

27 9. 7095333 Canada, Inc., also doing business as USYellowPageDirectory.com and
28 Oniks Media, is a Quebec corporation, with its principal place of business at 1440 Sainte-

1 Catherine West, Suite 421, Montreal, Quebec H3G1R8. 7095333 Canada, Inc., transacts or has
2 transacted business in this district and throughout the United States.

3 10. Oni Nathifa Julien is or has been an owner, officer, or director of 7703236
4 Canada, Inc., 7095333 Canada, Inc., OnlineYellowPagesToday.com, Inc., and
5 USYellowPageDirectory.com, Inc. At all times material to this Complaint, acting alone or in
6 concert with others, she has formulated, directed, controlled, had the authority to control, or
7 participated in the acts and practices set forth in this Complaint. Julien, in connection with the
8 matters alleged herein, transacts or has transacted business in this district and throughout the
9 United States. Among other things, Defendant Julien has acted as president, director, or
10 shareholder of all four Corporate Defendants and has arranged for the commercial mail receiving
11 agency mailboxes at which the Corporate Defendants have received consumers' payments and
12 other mail in the U.S.

13 11. Defendants 7703236 Canada, Inc., 7095333 Canada, Inc.,
14 OnlineYellowPagesToday.com, Inc., and USYellowPageDirectory.com, Inc. (collectively,
15 Corporate Defendants), have operated as a common enterprise while engaging in the deceptive
16 acts and practices alleged below. Corporate Defendants have conducted the business practices
17 described below through an interrelated network of companies that have the same business
18 functions, the same office location, and the same president and majority shareholder. Because
19 these Corporate Defendants have operated as a common enterprise, each of them is jointly and
20 severally liable for the acts and practices alleged below. Defendant Julien has formulated,
21 directed, controlled, had the authority to control, or participated in the acts and practices of the
22 Corporate Defendants that constitute the common enterprise.

23 12. Defendants represented themselves to consumers as USYellowPageDirectory.com
24 from approximately 2009 to approximately 2012, and as OnlineYellowPagesToday.com from
25 approximately 2011 to the present.

COMMERCE

1
2 13. At all times material to this Complaint, Defendants have maintained a substantial
3 course of trade in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act,
4 15 U.S.C. § 44.

DEFENDANTS’ BUSINESS ACTIVITIES

5
6 14. Since at least 2009, Defendants have engaged in a plan, program, or campaign
7 throughout the United States to deceptively sell, or collect payments for, listings in their Internet
8 business directories. The victims of Defendants’ scheme have included small businesses,
9 religious organizations, and government agencies (hereafter, “consumers”). Defendants’ scheme
10 has generated numerous complaints.

11 15. Defendants market listings in their business directories by making
12 misrepresentations during unsolicited outbound telephone calls to consumers nationwide.
13 Typically, Defendants’ representatives tell consumers’ owners or employees that they are calling
14 to “confirm” or “verify” the business name, address, and telephone number for the consumer’s
15 listing in Defendants’ online business directory. Defendants represent, expressly or by
16 implication, that the consumer previously was, or already is, listed in Defendants’ business
17 directory.

18 16. Based on Defendants’ representations, many of consumers’ owners or employees
19 reasonably believe that consumers previously have been, or already are, listed in Defendants’
20 business directory, or that someone in their organizations previously authorized or purchased a
21 listing. Accordingly, many consumers’ owners or employees confirm or correct the consumer’s
22 contact information, as requested. Defendants record these telephone calls and later use these
23 recordings to attempt to convince a representative of the consumer to pay for a listing in
24 Defendants’ business directory.

25 17. After these telephone calls, Defendants send invoices to the consumers. The
26 invoices and other correspondence deceptively display the well-known image of two walking
27 fingers, a symbol frequently associated with a local yellow pages directory. Defendants’
28 invoices typically bill consumers \$479.95 or more for a listing in Defendants’ business directory.

1 18. Many consumers that have not contracted for Defendants' listing services pay
2 Defendants because of Defendants' representations that one of the consumer's owners or
3 employees agreed to pay for a listing in Defendants' business directory.

4 19. If a consumer fails to pay Defendants' invoices, Defendants use other deceptive
5 tactics to collect. In numerous instances, Defendants send a letter demanding payment for an
6 invoice that is purportedly overdue. This correspondence typically identifies the individual who
7 purportedly took Defendants' initial telephone call and claims that this individual provided
8 "[c]onfirmation of the sales call and its content" and "confirmed that she [or he] was authorized
9 to purchase." In some instances, Defendants' representatives contact consumers by telephone
10 and identify an individual who purportedly ordered a business directory listing from Defendants.
11 Defendants also typically claim in correspondence and follow-up calls that a recording was made
12 of a call authorizing a listing and that the recording constitutes a binding oral contract.

13 20. In some instances, Defendants insist on their right to collect while refusing to play
14 the alleged authorization recording or admitting that it no longer exists. In other instances,
15 Defendants play the purported authorization recordings for the consumer's representative in
16 connection with the representation that the consumer is obligated to pay Defendants' invoices.
17 These recordings, however, are often altered to exclude misrepresentations or to create the
18 impression that authorization was provided, when it was not. In fact, Defendants often attempt
19 to collect from consumers whose employees expressly stated during the actual "confirmation"
20 telephone call that they did not wish, or were not authorized, to order a directory listing. In
21 addition, in some instances the individual who purportedly authorized this listing was not
22 employed by the consumer at the time of the alleged call, if ever.

23 21. In numerous instances, consumers investigate Defendants' invoices and refuse to
24 pay them because no one in the consumer organization ordered or authorized the business
25 directory listing. In those cases, Defendants take a number of steps to attempt to induce the
26 consumers, to pay, including multiple collection calls and repeated dunning notices. Defendants
27 also threaten to send the consumers' accounts to collection, to damage consumers' credit ratings,
28 and even to initiate legal proceedings against consumers.

1 22. Many consumers pay in response to Defendants' aggressive collection tactics and
2 threats not because a listing was authorized but to protect the consumer's credit rating or to avoid
3 being sued.

4 23. Even consumers who do not pay Defendants' invoices are injured as the result of
5 many hours spent responding to Defendants' harassing telephone calls and mailings. Defendants
6 agree to close the accounts of consumers who refuse to pay only when the Better Business
7 Bureau or law enforcement forward complaints on the consumers' behalf.

8 **VIOLATIONS OF THE FTC ACT**

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

11 25. Misrepresentations or deceptive omissions of material fact constitute deceptive
12 acts or practices prohibited by Section 5(a) of the FTC Act.

13 **COUNT I**

14 26. In numerous instances in connection with the marketing, promotion, offering for
15 sale, or sale of business directory listings, Defendants have represented, directly or indirectly,
16 expressly or by implication, through, *inter alia*, telephone calls, that consumers have a
17 preexisting business relationship with Defendants.

18 27. In truth and in fact, in numerous instances in which Defendants have made the
19 representation set forth in Paragraph 26 above of this Complaint, consumers do not have a
20 preexisting business relationship with Defendants.

21 28. Therefore, Defendants' representation as set forth in Paragraph 26 of this
22 Complaint is false and misleading and constitutes a deceptive act or practice in violation of
23 Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

24 **COUNT II**

25 29. In numerous instances in connection with the marketing, promotion, offering for
26 sale, or sale of business directory listings, Defendants have represented, directly or indirectly,
27 expressly or by implication, through, *inter alia*, telephone calls, invoices, or collection letters,
28 that consumers have agreed to purchase a listing in Defendants' business directory.

1 30. In truth and in fact, in numerous instances in which Defendants have made the
2 representation set forth in Paragraph 29 of this Complaint, consumers have not agreed to
3 purchase a listing in Defendants' business directory.

4 31. Therefore, Defendants' representation as set forth in Paragraph 29 of this
5 Complaint is false and misleading and constitutes a deceptive act or practice in violation of
6 Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

7 **COUNT III**

8 32. In numerous instances in connection with the marketing, promotion, offering for
9 sale, or sale of business directory listings, Defendants have represented, directly or indirectly,
10 expressly or by implication, through, *inter alia*, telephone calls, invoices, or collection letters,
11 that consumers owe money to Defendants for a listing in Defendants' business directory.

12 33. In truth and in fact, in numerous instances in which Defendants have made the
13 representation set forth in Paragraph 32 of this Complaint, consumers do not owe money to
14 Defendants for a listing in Defendants' business directory.

15 34. Therefore, Defendants' representation as set forth in Paragraph 32 of this
16 Complaint is false and misleading and constitutes a deceptive act or practice in violation of
17 Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

18 **CONSUMER INJURY**

19 35. Consumers have suffered and will continue to suffer substantial injury as a result
20 of Defendants' violations of the FTC Act. In addition, Defendants have been unjustly enriched
21 as a result of their unlawful acts or practices. Absent injunctive relief by this Court, Defendants
22 are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

23 **THE COURT'S POWER TO GRANT RELIEF**

24 36. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant
25 injunctive and such other relief as the Court may deem appropriate to halt and redress violations
26 of any provision of law enforced by the FTC. The Court, in the exercise of its equitable
27 jurisdiction, may award ancillary relief, including rescission or reformation of contracts,
28

1 restitution, the refund of monies paid, and the disgorgement of ill-gotten monies, to prevent and
2 remedy any violation of any provision of law enforced by the FTC.

3 **PRAYER FOR RELIEF**

4 Wherefore, Plaintiff FTC, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b),
5 and the Court's own equitable powers, requests that the Court:

6 A. Award Plaintiff such preliminary injunctive and ancillary relief as may be
7 necessary to avert the likelihood of consumer injury during the pendency of this action and to
8 preserve the possibility of effective final relief, including but not limited to, temporary and
9 preliminary injunctions and an order freezing assets.

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

12 C. Award such relief as the Court finds necessary to redress injury to consumers
13 resulting from Defendants' violations of the FTC Act, including but not limited to, rescission or
14 reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-
15 gotten monies; and

16 D. Award Plaintiff the costs of bringing this action, as well as such other and
17 additional relief as the Court may determine to be just and proper.

18
19 Dated: June 9, 2014

Respectfully Submitted,

20
21 JONATHAN E. NUECHTERLEIN
General Counsel

22 s/ Maxine R. Stansell
23 MAXINE R. STANSELL
24 Federal Trade Commission
25 915 Second Avenue, Suite 2896
26 Seattle, WA 98174
27 (206) 220-4474
(206) 220-6366 [fax]
mstansell@ftc.gov

28 Attorneys for Plaintiff
FEDERAL TRADE COMMISSION