



PROTECTION ACT, TEX. BUS. & COM. CODE § 17.41 *et seq.* (Vernon 1987 and Vernon Supp. 2000) (“DTPA”) upon the grounds that Defendants have engaged in false, misleading and deceptive acts and practices in the conduct of trade and commerce as defined and declared unlawful by § 17.46(a) and (b) of the DTPA.

### **III. PARTIES DEFENDANTS AND SERVICE**

3.1 Defendant YP CORP. is a foreign corporation duly formed and existing under the laws of the State of Nevada. Said Defendant, at all times material to this action, has engaged in business in El Paso County, Texas. Said Defendant does not maintain a place of regular business in Texas and has no registered agent in Texas on whom service of citation may be made, as required by TEX. BUS. CORP. ACT ANN. art. 2.11(B). The cause of action asserted against it arose from purposeful acts committed by Defendant in Texas. Accordingly, said Defendant may be cited by serving the Secretary of State of Texas, provided that the citation and petition are forwarded to its home office at 4840 E. Jasmine Street, Suite 105, Mesa, Arizona 85205 . YP Corp. is a publicly traded company with the call letters of YPNT.OB, and its business may be generally described as operating an Internet yellow pages website and selling Internet Advertising Packages which provide an enhanced listing on its yellow pages website. Defendant YP Corp. transacts business in the State of Texas under the name YP.com, YP.net, Yellow-Page.net, and through its wholly-owned subsidiary, Telco Billing, Inc.

3.2 Defendant Telco Billing, Inc. is a foreign corporation duly formed and existing under the laws of the State of Nevada. Said Defendant, at all times material to this action, has engaged in business in El Paso County, Texas. Said Defendant does not maintain a place of regular business in Texas and has no registered agent in Texas on whom service of citation may be made, as required

by TEX. BUS. CORP. ACT ANN. art. 2.11(B). The cause of action asserted against it arose from purposeful acts committed by Defendant in Texas. Accordingly, said Defendant may be cited by serving the Secretary of State of Texas, provided that the citation and petition are forwarded to its home office at 4840 E. Jasmine Street, Suite 105, Mesa, Arizona 85205. Defendant Telco Billing, Inc., is a wholly-owned subsidiary of Defendant YP Corp. Defendant Telco Billing, Inc., essentially carries out the marketing, sales and collections of accounts payable generated through sales of Internet Advertising Packages for YP Corp., as described more fully below. Defendant Telco Billing, Inc., also transacts business in the State of Texas under the name YP.com, YP.net, and Yellow-Pages.net.

#### **IV. VENUE**

4.1 Venue of this suit lies in El Paso County, Texas under DTPA § 17.47(b), because Defendants have done business in El Paso County, Texas; and

4.2 Under TEX. CIV. PRAC. & REM. CODE §15.002(a)(1) venue is proper in El Paso County, Texas because all or a substantial part of the events or omissions giving rise to the claims occurred in El Paso County, Texas.

#### **V. TRADE AND COMMERCE**

5.1 At all material times herein, Defendants have engaged in conduct, more fully set forth herein, which constitutes “trade” and “commerce” as those terms are defined by §17.45(6) of the DTPA.

#### **VI. PUBLIC INTEREST**

6.1 By reason of the institution and operation of the unlawful practices set forth herein Defendants have caused and will cause immediate and irreparable injury, loss and damage to the

State of Texas, and will also cause adverse effects to legitimate business enterprise which conducts its trade and commerce in a lawful manner in this State. Therefore, the Consumer Protection Division of the Attorney General of the State of Texas believes and is of the opinion that these proceedings are in the public interest.

**VII.  
NOTICE BEFORE SUIT**

7.1 Pursuant to §17.47(a) of the DTPA, contact has been made with Defendants herein to inform them of the DTPA violations alleged herein.

**VIII.  
ACTS OF AGENTS FOR DEFENDANT**

8.1 Whenever in this Petition it is alleged that Defendants did any act or thing, it is meant that Defendants themselves or the officers, agents, or employees of said Defendants performed or participated in such act or thing, and in such instance the officers, agents, or employees of Defendants were then authorized to and did in fact act on behalf of Defendant.

**IX.  
NATURE OF DEFENDANT'S OPERATIONS**

**On-Line Yellow Pages**

9.1 Defendant YP Corp. is a national Internet Yellow Pages publisher, headquartered in Mesa, Arizona. Through its wholly-owned subsidiary, Defendant Telco Billing, Inc., located in Las Vegas, Nevada, it publishes on the Internet its on-line yellow pages located at the following URL's: [www.Yellow-Page.Net](http://www.Yellow-Page.Net), [www.YP.Net](http://www.YP.Net), and [www.YP.Com](http://www.YP.Com).

9.2 The Defendants' on-line yellow pages contains business listings containing business and organization names, addresses and telephone numbers they have purchased or procured from various

other sources. In addition to those standard business listings, Defendants' on-line yellow pages contain enhanced listings which reflect the Defendants' Internet Advertising Packages or "IAP's." These enhanced listings purport to provide a "preferred status" for the listing and link that listing to a "Mini-WebPage" which may contain additional information about the business or organization. The IAP is YP Corp.'s principle product, and sales of IAP's constitute the YP Corp.'s principle source of revenue.

### **The Activation Check Solicitation**

9.3 Defendants' principal method of advertising IAP's from at least January 1, 2003, through October 31, 2006, has been through direct mail, which method has accounted for the majority of the sales of IAP's and, thus, the majority of the revenues of Defendant YP Corp.

9.4 Defendants' have adopted as their direct mail marketing program the use of a "Activation Check" which is a "live" or negotiable check made payable the prospective customer that, upon being deposited by that prospective customer, activates the customer's account and is treated as that customer's agreement to purchase an IAP and related services from Defendants.

9.5 Defendants have used this solicitation method and practice since at least January 1, 2003, through October 31, 2006, and, to Plaintiff's best knowledge and belief, utilized similar solicitation methods and practices for several years preceding that date.

9.6 Defendants mail millions of their "Activation Checks" each year to prospective customers across the country. Since January, 2003, more than a million Activation Checks were mailed to prospective customers in Texas.

9.7 The solicitations mailed into the State of Texas are substantially similar to that attached as Exhibit "A." The mailing consists of a window envelope with the "Activation Check" showing through. Lest there be any doubt, the envelope typically states "Check Enclosed." The check is for

a small amount, such as \$3.25 or \$3.50, and is made payable to the prospective customer. Nowhere on its face does the check indicate that deposit by the prospective customer will be construed by Defendants as a binding contract for the future payment for the Defendants' IAP services.

9.8 On the back of the check is a pre-printed endorsement statement which reveals that by depositing the check the prospective customer agrees to pay a monthly fee to YP Corp. and that this fee will likely be collected through the customer's local telephone bill or the bank account into which the Activation Check has been deposited. Also contained within the solicitation envelope, folded behind the "Activation Check" are one or two flyers which advertise the IAP and provide the "terms of service" if a prospective customer were to order the services. However, many, if not most, recipients of the solicitation who deposit the Activation Check do not notice and therefore are not aware of the content of these statements and other information.

9.9 Following the Defendants' determination that an Activation Check has been deposited, they post an enhanced listing (the IAP) in their on-line yellow pages by creating a Mini-WebPage for that business or organization. Depending on whether or when the Defendants' telemarketing agents reach the business or organization to obtain basic information for the Mini-WebPage, that webpage would provide the business hours, a brief description of the business, a link to a map, and other information.

9.10 Defendants do not provide customers with any written contract requiring their signature for these advertising services. Nor do they provide any draft listing or Mini-WebPage for the customer's review or affirmative approval.

9.11 Whether the "Activation Check" was endorsed by an individual's signature, a stamped endorsement, or no endorsement at all is of no effect. Its deposit triggers the contractual obligation claimed by Defendants.

9.12 The deposit of the “Activation Check” has also served as the triggering event for Defendants to begin the billing process.

### **Billing Channels**

9.13 Following YP Corp.’s receiving notice that an Activation Check has been deposited, the Defendants initiate the billing process to be used to collect the monthly fee for their IAP’s and related services through several billing channels.

9.14 The monthly IAP fees currently range from around \$27.50 to \$39.95.

9.15 The billing dominant channel is through Local Exchange Carriers, or the customer’s local telephone company’s bill, also referred to as “LEC” billing. This billing channel accounts for approximately 42% of the Defendants’ current billings nationwide. Defendants utilize several third party billing “aggregators,” including ILD Telecommunications, Payment One (formerly known as IGT), Billing Concepts (formerly known as Enhanced Services Billing, Inc., or ESBI), and others. Working through these third party billing aggregators, the Defendants’ charges appear in various formats in the customer’s telephone bill. After the customer pays their telephone bill, the billed amount is then remitted by the LEC to the aggregator and then to YP Corp., subject to various fees, reserves, and hold-backs.

9.16 The second billing channel, accounting for about 52% of current billings nationwide, is through the customer’s own bank account, by causing a direct bank withdrawal to be made from the account into which the customer had originally deposited the “Activation Check.” These charges are transferred to the customer’s bank account through automated clearing houses, including, but not limited to, AmerePay Solutions, First Payment Processing, Inc., ACH Direct, Inc., Payment One, and others. Working through these automated clearing houses, the Defendants’ charges appear in various formats on the customers’ bank accounts, reflecting the customer’s bank having paid the monthly

fee. The automated clearing house receives payment from the customer's bank and then remits the payment to YP Corp. subject to various fees, reserves, and hold-backs.

9.17 A lesser-used billing channel is a mailed paper invoice, accounting for less than 5% of the Defendants' current billings. A smaller percentage of customers are billed through credit card accounts.

9.18 As a result of the Defendants' use of unorthodox billing channels for the collection of monthly fees, Texas businesses and organizations have been unaware of the fact that they are paying for Defendants' IAP services and have unknowingly paid for the same for months, and even years, before discovering that fact.

9.19 Defendant Telco Billing, Inc., as the wholly-owned subsidiary of Defendant YP Corp., is primarily responsible for the following functions:

- A. Creating the advertisements/solicitations to be used to solicit the purchase of YP.Com Internet Advertising Packages;
- B. Selecting the prospective customers to whom the above advertisements/solicitations are to be sent;
- C. Procuring solicitation/ mailing lists for purposes of mailing the above advertisements/solicitations to prospective customers;
- D. Paying those Activation Checks which are deposited by prospective customers;
- E. Causing to be submitted to any third party for billing and collection purposes the directive to process a charge against a customer's telephone bill, utility bill, or banking account;
- F. Receiving and accounting for receipt of any monthly payments from customers;
- G. Contacting customers regarding the design of their "Mini-Webpage", their "Preferred

Listing” or their “Listing Distribution;”

- H. Contacting customers for the purpose of confirming their intention to purchase a YP.Com Internet Advertising Package; and
- I. Communicating with a customer seeking to cancel the purchase of the YP.Com Internet Advertising Package.

9.20 The several named Defendants have each participated in some aspect of the acts and practices described herein, although their direct participation is not yet known to Plaintiff.

### **Victims in Texas**

9.21 Texas individuals, businesses, churches and organizations who have been solicited by Defendants include businesses of every size and nature across the State, as well as non-profit organizations, schools and universities, and churches. See Affidavits attached as Exhibits “B” through “K” as examples.

9.22 Since January 1, 2003, more than 54,000 Texas individuals, businesses, churches and organizations have received and deposited one or more “Activation Checks” mailed to them by Defendants.

9.23 Some individuals, businesses, churches and other organizations in Texas may have been unaware of the fact they deposited an Activation Check sent to them by Defendants and that, by that deposit, entered into any obligation towards Defendants.

9.24 Some individuals, businesses, churches and other organizations may have thus deposited Defendants’ Activation Checks by mistake or error and in the absence of any deliberate decision to purchase any of Defendants’ advertising services. Some of these individuals, businesses, churches and organizations have had no interest in or business need for any national or on-line advertising.

9.25 Some Texas individuals, businesses, churches and other organizations in Texas received billings from the Defendants for advertising services and paid monthly charges to YP Corp., and may have been unaware of the inclusion of Defendants' charges in their local telephone bill or the debiting of those charges from their bank accounts.

9.26 Texas individuals, businesses, churches and organizations have paid Defendants for these advertising services without their knowledge for varying periods of time due to the billing methods employed by Defendants.

9.27 Some such individuals, businesses, churches and other organizations have upon discovering Defendants' charges, have taken measures to cancel those charges or close the accounts.

9.28 Of the more than 54 Thousand Texas individuals, businesses, churches and organizations who deposited an Activation Check sent by Defendants, more than 30 Thousand have cancelled, terminated, or otherwise ceased payment on the accounts that were established by Defendants when those "Activation Checks" were deposited.

9.29 Texas individuals, businesses, churches and other organizations who later discovered a mistaken deposit or unknown payments to Defendants have requested refunds from Defendants of moneys they mistakenly paid and have been refused by Defendants.

9.30 Based on the foregoing allegations, the State of Texas contends that the majority of individuals, businesses, churches, and organizations which deposited "Activation Checks" sent to them by Defendants did so by mistake and without reaching any agreement on their behalf to purchase Defendants' advertising services, and were unaware that their deposit would subject that business or organization to monthly billings by Defendants.

9.31 Based on the foregoing allegations, the State of Texas contends that the majority of individuals, businesses, churches and organizations which deposited "Activation Checks" sent to

them by Defendants have paid charges and sustained losses for varying lengths of time while being unaware of those charges being included within their telephone bills or debited from their bank accounts and have thus paid such charges by mistake.

## **X. EFFECTS OF CONDUCT**

10.1 Defendants' business practices are misleading and deceptive in that they are using writing, graphical elements or other indicia which are likely to be understood by a payee, or an agent thereof, to represent a pre-existing business relationship with YP Corp. when that is not in accord with the facts.

10.2 Defendant's business practices are misleading and deceptive in that they employ a guise of a pre-existing business relationship with prospective customers for the purpose of soliciting the sale of goods or services.

10.3 Defendant's business practices are misleading and deceptive in that they present an Activation Check in such a manner as to have the capacity to cause payees, or recipients thereof, to believe that Activation Check is a refund, a rebate, or a payment of some nature other than the means by which the recipient or payee is to accept an offer for the sale of goods and services, which practice is deceptive.

10.4 Defendant's business practices are misleading and deceptive in that they suppress material fact by placing information which would disclose the purpose of the Activation Check, or the obligation to which a payee commits by depositing the same, in locations which are less likely to be seen, read, or recognized as having such importance by the recipient of the Activation Check, or any agent thereof who is likely to receive and take any action with respect to the Activation Check.

10.5 Defendant's business practices are misleading and deceptive in that they utilize as the method of acceptance of an offer for the sale of goods and services a device which, if treated in a manner consistent with common business practices, such as the utilization of a lockbox or similar policies mandating the prompt deposit of any negotiable instruments or other payments received by the payee, risks obligating that payee to payment for goods and services that the payee has not knowingly agreed to purchase, when such practice is unscrupulous and unethical and is likely to cause substantial harm.

10.6 Defendant's business practices are misleading and deceptive in that they submit bills through, and collects payments for goods and services and services through, an unrelated billing mechanism or billing channels, such as through a customer's telephone bill or through direct withdrawals from the customer's bank account, without that customer's knowing, express consent to the such method of payment, which practice is likely to be undetected by the customer and is unscrupulous and likely to cause substantial harm.

## **XI. SPECIFIC DECEPTIVE TRADE PRACTICES**

11.1 Paragraphs 1 through 10 above, are incorporated herein as if set forth verbatim. Consequently, based on the aforesaid conduct, Plaintiff has reason to believe and alleges the following specific violations of the Texas Deceptive Trade Practices and Consumer Protection Act, TEX. BUS.& COM. CODE §17.41 *et seq.* (Vernon 1987 and Vernon Supp. 2000), §§17.46(a) and (b)(1), (2), (5) and (24), as follows:

- (A) that Defendants have committed false, misleading, or deceptive acts or practices in the conduct of trade or commerce, in violation of §17.46(a);
- (B) that Defendants have passed off goods or services as those of another, in violation

of §17.46(b)(1);

- (C) that Defendants have cause confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services, in violation of §17.46(b)(2);
- (D) that Defendants have represented that their goods and services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he does not, in violation of §17.46(b)(5);
- (E) that Defendants have failed to disclose information concerning its goods or services which was known by Defendants at the time of the transaction when such failure to disclose was intended to induce the consumers into transactions which they would not have entered if disclosure had been made, in violation of §17.46(b)(24).

## **XII. INJURY TO CONSUMERS**

12.1 By means of the foregoing unlawful acts and practices, Defendants have acquired money from identifiable persons to whom such money should be restored, or who in the alternative are entitled to an award of damages.

## **XIII. PRAYER**

13.1 Because Defendants have engaged in unlawful acts and practices described above, Defendants have violated and will continue to violate the law as alleged in this Petition. Unless restrained by this Honorable Court, Defendants will continue to violate the laws of the State of Texas and cause immediate, irreparable injury, loss and damages to the State of Texas and to the general

public.

13.2 WHEREFORE, Plaintiff prays that the Court issue a TEMPORARY RESTRAINING ORDER restraining Defendants as set forth herein, and that Defendants be cited according to law to appear and answer herein; that after due notice and hearing a TEMPORARY INJUNCTION be issued; and upon final hearing a PERMANENT INJUNCTION be issued, restraining and enjoining Defendant, Defendant's affiliates, officers, agents, servants, employees and attorneys and any other person in active concert or participation with Defendants from engaging in the following acts or practices:

- (A) Transferring, concealing, destroying, or removing from the jurisdiction of this Court any books, records, documents, invoices, or other written materials relating to the business of Defendants currently or hereinafter in Defendant's possession, custody or control except in response to further orders or subpoenas in this cause;
- (B) Using any Activation Check to solicit the sale of an IAP or related services,
- (C) Continuing to bill or collect or receive payments from any Texas business, church or other organization through either LEC billing channels or ACH billing channels unless and until they obtain express written authorization from such business or organization acknowledging their purchase of specified services or other merchandise from the Defendants and consenting to such billing and the terms in which it is being conducted.
- (D) Representing, directly or by implication, that this court or the Attorney General has approved any good or service sold or offered for sale by Defendant, or has approved any of Defendant's business practices.

13.3 In addition, Plaintiff STATE OF TEXAS respectfully prays that this court will:

- (A) Adjudge against Defendants civil penalties in favor of Plaintiff STATE OF TEXAS in the amount of \$20,000.00 per violation of the DTPA.
- (B) Order Defendants to restore all money or other property taken from identifiable persons by means of unlawful acts or practices, or in the alternative award judgment for damages to compensate for such losses.
- (C) Order Defendants to pay Plaintiff STATE OF TEXAS attorneys fees and costs of court pursuant to TEX. GOV. CODE §402.006(c).
- (D) Order Defendants to pay pre-judgment interest on all awards of restitution, damages or civil penalties, as provided by law.
- (E) Grant all other relief to which Plaintiff STATE OF TEXAS may show itself entitled.

DATED this 14th day of December, 2006.

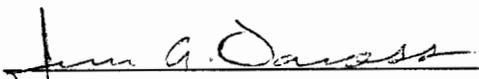
Respectfully submitted,

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