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EL PASO COUNTY, TEXAS

THE STATE OF TEXAS

Plaintiff

v.

AD TELAMERICA, INC. d/b/a YELLOW
PAGES DIRECTORIES, and d/b/a
www.onlineyellowpages.com, and
BARBARA SOMMER,

Defendants.

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CAUSE NO. 2007- 4994

**PLAINTIFFS' ORIGINAL PETITION
FOR CIVIL PENALTIES, RESTITUTION,
AND PERMANENT INJUNCTION**

TO THE HONORABLE COURT:

Plaintiff the STATE OF TEXAS, acting by and through the Attorney General of Texas, GREG ABBOTT, complains of AD TELAMERICA, INC. d/b/a YELLOW PAGES DIRECTORIES, and d/b/a www.onlineyellowpages.com, and BARBARA SOMMER Defendants, and for cause of action would respectfully show the Court the following:

**I.
DISCOVERY CONTROL PLAN**

1.1 The discovery in this case is intended to be conducted under Level 2 pursuant to TEX. R. Civ. P. 190.3.

**II.
JURISDICTION**

2.1 This action is brought by Attorney General Greg Abbott, through his Consumer Protection and Public Health Division, in the name of the State of Texas and in the public interest

under the authority granted to him by TEXAS DECEPTIVE TRADE PRACTICES--CONSUMER 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 DEFENDANT AND SERVICE

3.1 Defendant AD TELAMERICA, INC. is a corporation duly formed and existing under the laws of the State of Texas. Said Defendant, at all times material to this action, has engaged in business in El Paso County, Texas. Defendant AD TELAMERICA, INC. transacts business in the State of Texas under the name YELLOW PAGES DIRECTORIES. It may be served by serving its registered agent for service of process, Bruce Baldwin, 8150 North Central Expressway, Suite 100, Dallas, Texas 75206.

3.2 Defendant BARBARA SOMMER is an individual residing in the State of Texas who may be served with process at 18624 Shadow Ridge Drive., Dallas, Texas 75287. Defendant BARBARA SOMMER owns and operates AD TELAMERICA, INC. and serves as its president. As such, Defendant BARBARA SOMMER has the responsibility for the overall management and oversight of the company, including compliance with all state statutes. She also has the responsibility of supervising other officers, directors, and employees of the corporation. As a result, Defendant BARBARA SOMMER directs and has personal knowledge of the day-to-day activities of the company.

**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.

**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 DEFENDANTS**

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 Defendants.

IX. NATURE OF DEFENDANTS' OPERATIONS

The Directories

9.1 Defendants are the publishers of a yellow pages-type directory, headquartered in Carrollton, Texas. They publish a directory in print or on CD Rom, and contract for the existence of a directory on the internet.

9.2 The Defendants' yellow pages directory contains listings with business and organization names, addresses and telephone numbers they have purchased or procured from various other sources. Defendants' solicitations stated in fine print on the back of the form that the print directory will be distributed to "advertisers, selected corporate and government purchasing agents, libraries, hotels/motels, chambers of commerce, and other civic institutions throughout the U.S.," or that "distribution of directories or CD's is to businesses and is not distributed to all local area telephone company subscribers."

9.3 Defendants aver that they did not publish a yellow page directory prior to 2005. In 2005, they published only 9,109 of the print directories. In 2006, they published only 19,109 copies of the directory in CD format. they published only 40,000 copies of the directory in CD format in June, 2007.

9.4 Consumers who return the "Listing Confirmation Form" have their names, addresses and telephone numbers published in the directories in bold type, as an "Enhanced Listing."

The Solicitation

9.5 Defendants' principal method of advertising their directory services has been through direct mail.

9.6 Defendants have adopted as their direct mail marketing program the use of a so-called "Listing Confirmation Form," representative samples of which are attached to this Petition as Exhibits "A" through "D."

9.7 Defendants have used this solicitation method and practice since at least June of 2004.

9.8 Defendants mail approximately 150,000 of their "Listing Confirmation Forms" each month to prospective customers across the country. Since March 24, 2006, more than 2,000,000 Listing Confirmation Forms were mailed to prospective customers.

9.9 Defendants have stated that 19,004 recipients have returned a Listing Confirmation Form contained in a solicitation soliciting the sale of a Yellow Pages Directories Enhanced Listing, and have therefore been considered "customers" by Defendants.

9.10 Defendants' "Listing Confirmation Forms" are false, misleading and deceptive in the following respects:

- A. The form has the term "FINAL NOTICE" in all caps, bold and very large type, which would make the recipient believe it has a prior relationship with Defendants, when this is not the case.
- B. The envelope in which the solicitation is mailed also has the words "FINAL NOTICE" printed on a red background, which would make the recipient believe it has a prior relationship with Defendants, when this is not the case.
- C. The form has the term "Listing Confirmation Form" in bold and very large type, which would make the recipient believe some prior communication about a listing had taken place and only needed to be confirmed, when this is not the case.
- D. The form uses yellow coloring and the familiar walking fingers logo. While the logo is in the public domain since the Bell system never copyrighted it, the average consumer believes it is connected with the Bell system. Use of the words "yellow pages" and this logo in the context of the solicitation as a whole tends to mislead

ordinary consumers.

- E. The form shows an “Advertiser Record No.” and the recipient’s telephone number, again indicating that a prior relationship exists, when this is not the case.
- F. The form states “your listing will be omitted if you do not return this form,” implying that a listing had previously been included, when this is not the case.
- G. The form uses the word “free” in several locations, implying that the consumer will not be billed for anything if the form is returned, when this is not the case.
- H. The price the consumer business will pay, currently \$298.00 per year, if it returns Defendants’ form is shown only on the reverse of the solicitation, in very tiny type. This is not a clear and conspicuous disclosure of the price of the advertising.
- I. The directory which is purportedly printed, or on CR Rom, is sent only to other “subscribers” and to a limited number of other recipients, and not to all telephone customers in the consumer’s area, as the telephone company’s directory will, and as consumers can reasonably expect.
- J. In fine print on the back of the solicitation, Defendants state that the advertising covered by the solicitation is for the current edition, and every edition thereafter, which purports to obligate the consumer to Defendants forever, without adequate disclosure that the subscription automatically renews.
- K. Defendants’ internet edition is found at www.onlineyellowpages.com, which is operated by a separate company located in Massachusetts. There is no disclosure that the consumer is in effect contracting with another company.
- L. The limited distribution of Defendants’ directory demonstrates that its value as advertising to consumers who pay for listings is nil. Further, none of the consumers who have complained to the Attorney General have reported receiving the purported directory.

9.11 Defendants do not provide customers with any written contract requiring their signature for these advertising services. Nor do they provide any draft listing or proof for the customer’s review or affirmative approval.

Billing

9.12 Following Defendants’ receipt of a Listing Confirmation Form from a consumer, the Defendants invoice the “customer” for the amount due, payable 30 days from the receipt of the

listing Confirmation Form.

9.13 The fee for an Enhanced Listing in Defendants' directories is currently \$298 per year.

9.14 Customers who do pay Defendants do so by way of credit card, check, or check by phone.

9.15 If Defendants do not receive payment within 30 days of the due date, they will send the customer a past due notice, requesting payment. They claim to have recently implemented a 60 day notice in addition to the 30 day notice. Accounts that are 90-120 days past due are sent to an independent third party collection agency, by the name of Greenberg, Grant & Richards.

9.16 Defendant asserts that approximately 88% of Defendants' customers pay their bills before being referred to collections. The 12% who are sent to Greenberg, Grant & Richards report that Defendants will not discuss the matter with them once the referral is made.

9.17 Defendant BARBARA SOMMER, as the sole officer of Defendant AD TELAMERICA, is responsible for:

- A. Creating the advertisements/solicitations to be used to solicit the purchase of Yellow Pages Directories Enhanced Listings;
- 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. Causing to be submitted to any third party for collection purposes the directive to begin collection efforts;
- E. Receiving and accounting for receipt of any monthly payments from customers;
- F. Communicating with a customer seeking to cancel the purchase of the Yellow Pages

Directories Enhanced Listing.

Victims

9.18 Individuals, businesses, churches and organizations who have been solicited by Defendants include businesses of every size and nature across the country, as well as non-profit organizations, schools and universities, and churches. See complaints attached as Exhibits “E” through “H” as examples.

9.19 Since June, 2004, more than 19,000 individuals, businesses, churches and organizations have received and returned to Defendants one or more “Listing Confirmation Forms” mailed to them by Defendants.

9.20 Many individuals, businesses, churches and other organizations were unaware of the fact that by returning a Listing Confirmation Form sent to them by Defendants they purportedly entered into a contractual obligation with Defendants.

9.21 Many individuals, businesses, churches and other organizations filled out Defendants’ Listing Confirmation Forms 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.

9.22 Some such individuals, businesses, churches and other organizations, upon discovering Defendants’ charges, have attempted to take measures to cancel those charges or close the accounts, only to be rebuffed by Defendant BARBARA SOMMER.

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

9.24 Based on the foregoing allegations, the State of Texas contends that the majority of

individuals, businesses, churches, and organizations which filled out and returned “Listing Confirmation Forms” sent to them by Defendants did so by mistake and without reaching any agreement on their behalf to purchase Defendants’ advertising services.

**X.
EFFECTS OF CONDUCT**

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

10.2 Defendants’ business practices are false, 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 Defendants’ business practices are false, misleading and deceptive in that they present a solicitation in such a manner as to have the capacity to cause recipients thereof to believe that the Listing Confirmation Form is a confirmation for advertising with the telephone company used by the consumer.

10.4 Defendants’ business practices are false, misleading and deceptive in that they fail to disclose a material fact by placing information which would disclose the purpose of the Listing Confirmation Form, or the obligation to which a payee commits by filling out and returning the same, in locations which are less likely to be seen, read, or recognized as having such importance by the recipient of the Listing Confirmation Form, or any agent thereof who is likely to receive and take any action with respect to the Listing Confirmation Form.

10.5 Defendants’ business practices are false, 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, risks obligating the consumer 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.

**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 their 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.
REQUEST FOR DISCLOSURE**

13.1 Under Tex. R. Civ. P. 194.3a, Plaintiff requests that Defendants disclose, within 50 days of the service of this request, the information or material described in Tex. R. Civ. P. Rule 194.2.

**XIV.
PRAYER**

14.1 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.

14.2 WHEREFORE, Plaintiff prays 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 Defendants, Defendants' 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 Defendants' possession, custody or control except in response to further orders or subpoenas in this cause;
- (B) Using any form which is the same as or substantially similar to the attached Listing Confirmation Forms to solicit the sale of yellow pages directory advertising.
- (C) Continuing to bill or collect or receive payments from any Texas business, church or other organization 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 Defendants, or has approved any of Defendants' business practices.

14.3 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 8th day of November, 2007

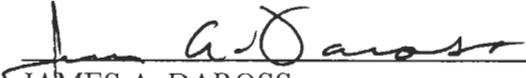
Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

KENT C. SULLIVAN
First Assistant Attorney General

JEFF L. ROSE
Deputy First Assistant Attorney General

PAUL D. CARMONA
Chief, Consumer Protection and Public Health Division



JAMES A. DAROSS
Assistant Attorney General
Consumer Protection and Public Health Division
401 E. Franklin Ave., Suite 530
El Paso, Texas 79901
(915) 834-5800
Fax (915) 542-1546
State Bar No. 0539150