

IN THE DISTRICT COURT OF EL PASO COUNTY, TEXAS
327TH JUDICIAL DISTRICT COURT

FILED
GILBERT SANCHEZ
DISTRICT CLERK

2008 JUN 4 PM 1 55

EL PASO COUNTY, TEXAS

BY _____

THE STATE OF TEXAS

Plaintiff

v.

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

Defendants

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CAUSE NO. 2007-4994

**AGREED FINAL JUDGMENT
AND PERMANENT INJUNCTION**

TO THE HONORABLE JUDGE OF SAID COURT:

On this date, came for hearing the agreement of the parties in the above entitled and numbered cause, in which THE STATE OF TEXAS is Plaintiff and AD TELAMERICA, INC. d/b/a YELLOW PAGES DIRECTORIES, and BARBARA SOMMER are Defendants.

I. JURISDICTION AND SCOPE

1. Jurisdiction and Venue. The Court has jurisdiction over the parties to this action and finds that venue is proper.

2. Scope of Judgment. The injunctive provisions of this Agreed Final Judgment and Permanent Injunction ("Judgment") are entered pursuant to the TEXAS DECEPTIVE TRADE PRACTICES--CONSUMER PROTECTION ACT, TEX. BUS. & COM. CODE § 17.41 *et seq.* (Vernon 1987 and Vernon Supp. 2006) ("DTPA") relating to the use of written, mailed solicitations in connection with the sale of goods or services and are applicable to Ad TelAmerica, Inc. and Barbara Sommer, their officers, agents, servants, and employees, and upon those persons in active concert or participating with either of them who have actual notice of this Judgment by

personal service or otherwise. This Judgment applies to natural persons only in their respective capacities as directors, officers, employees, agents, servants or representatives of Ad TelAmerica, Inc., d/b/a Yellow Pages Directories.

II. DEFINITIONS

The following definitions shall be used in interpreting the terms of this Judgment.

Solicitation Form means a written instrument which, when it is signed and returned by the recipient, is intended by the sender to evidence the acceptance by the recipient of an offer to sell yellow pages advertising services or the acceptance of an obligation to pay for yellow pages advertising services.

Bill or Billing means the submission of a written invoice for yellow pages advertising services delivered through the United States mail.

Collection means submitting an account of an individual owner of a business, business, institution, or other organization to a third party debt collector, and the processes used by said third party collector in attempting to secure payment of unpaid or past-due amounts

Solicitation Form Customer means any individual owner of a business, business, institution, or other organization which was initially solicited by Defendants through a Solicitation Form, was subjected to billing by Defendants, and made at least one payment to Defendants

Current Solicitation Form Customer means any Solicitation Form Customer which made a payment to Defendants and was included as a customer in the last print, CD or DVD directory which was published prior to the Effective Date of this Judgment.

Clear and Conspicuous means that information required to be disclosed to the recipient shall be worded plainly and simply, and appear in a type size, prominence, and location as to be readily noticeable, readable, and comprehensible to an ordinary business owner.

Effective Date means the date this Judgment is filed with the Court.

Represent means to state, or to imply through statements, questions, conduct, graphics, symbols, lettering, formats, devices, language, documents, messages, or through any other manner or means by which meaning might be conveyed. For purposes of this Judgment, this definition applies to other forms of the word "Represent," including without limitation "Representation." In determining the express or implied meaning of a Representation that appears on the outside of a mailing envelope, only matter visible without opening the envelope shall be considered.

III. INJUNCTIVE TERMS

IT IS THEREFORE ORDERED that Defendants, their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with Defendants who receive actual notice of this order by personal service or otherwise, are hereby permanently enjoined as follows:

A. Promotional Practices

1. Solicitation of Individuals. Defendants will not knowingly send any Solicitation Form to individuals who are not in business.
2. Prohibited Solicitation. Defendants will not send to individual business owners, businesses, institutions, or other organizations, any Solicitation Form if the advertising offered

consists solely of a yellow page book, CD or DVD which is distributed primarily to other advertisers.

2. Prohibited Matter in Solicitation Forms. In connection with the advertisement, offer for sale or sale of goods or services, Defendants shall not, directly or indirectly, send to individual business owners, businesses, institutions, or other organizations, any Solicitation Form that contains any of the following:

a. the term "Final Notice," unless it is accompanied by a clear and conspicuous disclosure that it is also the first notice sent to the recipient, if that is the case

b. the term "Confirmation," unless the recipient is being asked only to confirm a prior communication regarding a listing

c. a statement such as "Advertiser Record No." or other account number, along with the recipient's telephone number, which words imply a preexisting business relationship

d. the statement "your listing will be omitted if you do not return this form," or words of similar import, which words imply a preexisting business relationship

e. the term "free," unless the Form also clearly and conspicuously discloses what is free and what will be billed for

3. Required Matter in Solicitation Forms. In connection with the advertisement, offer for sale or sale of goods or services, Defendants shall, in any Solicitation Form sent to individual business owners, businesses, institutions, or other organizations, include the following:

a. a clear and conspicuous disclosure of the price which will be billed to the recipient if he, she or it returns the Solicitation Form to Defendants

- b. a clear and conspicuous description of the distribution which will be made of the print, CD or DVD directory, if such is the case
 - c. a clear and conspicuous disclosure of the fact that the listing to be billed for is in an internet directory, if such is the case
 - d. a portion of the Solicitation Form which can be retained by the recipient, containing a clear and conspicuous description of the terms and conditions of the solicitation, including the cost thereof.
 - e. a clear and conspicuous disclosure that the Solicitation Form is not a bill.
4. Distribution. If Defendants publish a print, CD or DVD directory, they must distribute a copy of it to every Current Solicitation Form Customer in such directory who has paid in full for the advertising included in the edition of the directory being distributed.
5. Representations. Defendants shall not, in connection with the advertisement, offer for sale or sale of goods or services:
- a. Represent that they have a preexisting business relationship with the recipient, unless that is in fact the case
 - b. Represent, 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.

B. Refunds

1. Refunds. Within sixty (60) days following the date of this Judgment, Defendants shall mail to each Customer who complained to the Attorney General or the Better Business Bureau prior to the date of this Judgment a full refund of the amount paid by each such customer, if any, and cancel any billing or collection efforts directed to each such Customer, if any.

2. Non-Exclusivity of Redress. Nothing in this Judgment shall be construed as limiting the ability of Defendants to offer additional refunds, credits or other redress which exceeds the requirements of this judgment. Defendants shall continue to honor any private agreements reached with individual customers.

3. Limitation on Collection Efforts. Other than sending invoices to customers, Defendants shall not cause a third party debt collector to pursue collection of unpaid or past-due amounts owed on any account which was obtained through the use of a Solicitation Form mailed prior to February 8, 2008, or represent that such collection may occur.

4. Reporting. Within sixty (60) days following the conclusion of the 60-day refund period described above, Defendants shall provide to the State a record in electronic form (e.g., Microsoft Excel or other compatible database) itemizing all customers which responded to Exhibit "A," and the following details, to the extent they are available: their name, address, telephone number, account number, the date their response was postmarked, and the amount they were paid by Defendants and the date that payment was mailed.

IV. MONETARY PROVISION

1. Attorney's Fees. The STATE OF TEXAS shall have and recover of and from Defendants the sum of \$35,000.00, the same being the STATE OF TEXAS's reasonable and necessary attorney's and investigative fees through this date, as provided by the DTPA. Defendants shall pay this sum in 6 monthly installments (in the amount of \$5,833.33 for the first 5 months and \$5833.35 for the final month) starting on the date of this judgment.

V. RECORDS AND COMPLIANCE

1. Provision of Records. Defendants shall maintain and make available to the State, upon its written request, all books, records and other documents reflecting the use of any Solicitation Form or any account created following the use of an Solicitation Form or which otherwise reflect the implementation of the terms of this Judgment and compliance with its terms. Any such records requested by the State shall be made available for inspection within twenty (20) business days. Defendants shall honor any request from the State to make such records available without further legal process.

VI. GENERAL AND ADMINISTRATIVE PROVISIONS

1. Modification. Jurisdiction is retained for the purpose of enabling any party to this Judgment to apply to the Court at any time for such further orders and directions as might be necessary or appropriate for the modification, construction, or carrying out of the injunctive provisions of this Judgment, or for the enforcement of and the punishment of violations of any provisions hereof. The parties by stipulation may agree to a modification of this Judgment, which agreement shall be presented to this Court for consideration, provided that the parties may jointly agree to a modification only by a written instrument signed by or on behalf of both the State and Defendants.

Any party to this Judgment may petition the Court for modification on thirty (30) days' notice to all other parties to this Judgment. If Defendants wish to seek a stipulation for a modification from the State, they shall send a written request for agreement to such modification to the Attorney General of the State at least thirty (30) days prior to filing a motion with the Court for such modification.

2. Modification for Conflict of Law. If, after the Effective Date of this Judgment, the State, its Attorney General, or any agency of the State charged with the administration of its consumer protection statutes, enacts or promulgates legislation, rules, or regulations with respect to the matters governed by this Judgment that conflict with any provision of this Judgment, including, specifically allowing, under certain conditions, that which is prohibited under this Judgment, or if the applicable law of the State shall otherwise change so as to conflict with any provision of this Judgment, the Attorney General shall not unreasonably withhold its consent to the modification of such provision to the extent necessary to eliminate such conflict.

If, with respect to Solicitation Forms mailed to recipients in a state other than Texas, the Defendants are subject to a law, regulation or directive from a law enforcement agency in such state, including but not limited to an injunction, assurance of voluntary compliance, assurance of discontinuance, or cease and desist order, that conflicts with a provision of this Judgment, such law, regulation or directive shall be controlling and Defendants will not be liable for violating this Judgment to the extent such violation was required by such law, regulation or directive.

Laws, rules, or regulations, or other requirements in State law, with respect to the matters governed by this Judgment, shall be deemed to "conflict" with a provision of this Judgment if Defendants cannot reasonably comply with both such law, rule, or regulation and an applicable provision of this Judgment. If Defendants believe that they cannot reasonably comply both with this Judgment and with applicable federal law, rules, or regulation, they may seek modification hereof.

3. Release of Claims. The State acknowledges by its execution hereof that this Judgment constitutes a complete settlement and release of all civil claims on behalf of the State against Defendants and all of their officers, directors, employees, agents, servants, representatives, and

their successors and assigns (all such released parties shall be collectively referred to as the "Releasees"), with respect to all claims and causes of action which were asserted or which could have been asserted prior to the Effective Date under the above-cited consumer protection statutes and which were based upon the use of Solicitation Forms. The State agrees that it shall not proceed with or institute any additional civil action or proceeding based upon the above-cited consumer protection statutes against the Releasees (including but not limited to an action or proceeding seeking restitution, injunctive relief, fines, penalties, attorneys' fees, costs, or other relief) for the use of any Solicitation Form by the Releasees prior to the Effective Date. Notwithstanding the foregoing, the State may institute an action or proceeding to enforce the terms and provisions of this Judgment or to take action based on future conduct by the Releasees. Defendants acknowledge that a violation of this Judgment may be evidence of a violation of state law.

4. Preservation of Law Enforcement Action. Nothing herein precludes the State from enforcing the provisions of this Judgment, or from pursuing any law enforcement action with respect to the acts or practices of Defendants not covered by this Judgment or any acts or practices conducted after the Effective Date of this Judgment.

5. Compliance with and Application of State Law. Nothing in this Judgment will be construed to limit the authority of the Attorney General to protect the interests of the State or the people of the State. Accordingly, nothing herein relieves Defendants of their continuing duty to comply with applicable laws of the State nor constitutes authorization by the State for Defendants to engage in acts and practices prohibited by such laws. This Judgment shall be governed by the laws of the State of Texas.

6. Non-Admission. This Judgment shall not be construed as, or deemed to be evidence of, an admission or concession on the part of Defendants of any liability or wrongdoing whatsoever, which is hereby expressly denied and disclaimed by Defendants.

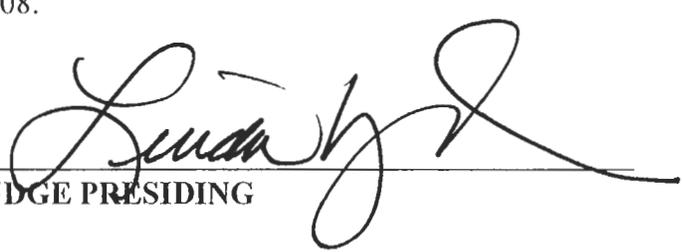
7. Past and Future Practices. Nothing herein constitutes approval or acquiescence by the State of Defendants' past practices, current efforts to reform their practices, or any future practices which Defendants may adopt or consider adopting. The State's decision to settle this matter or to otherwise unilaterally limit current or future enforcement action does not constitute approval or imply authorization for any past, present or future business practice.

8. No Change to Substantive Rights. Nothing herein shall be construed to waive, modify or change any substantive rights of other persons or entities against Defendants or of Defendants against other persons or entities with respect to the acts and practices covered by this Judgment.

9. Assessment of Court Costs. Any court costs which may be assessed in this action, including any filing fees or other charges, shall be assessed against Defendants. No charges shall be assessed against the State.

10. Finality. After signing by the Court, this agreement constitutes final judgment. All relief not expressly granted herein is denied.

SIGNED this 4 day of June, 2008.



JUDGE PRESIDING

SIGNATURES ARE ON NEXT PAGE

APPROVED AS TO FORM AND SUBSTANCE AND ENTRY REQUESTED:

AD TELAMERICA, INC.

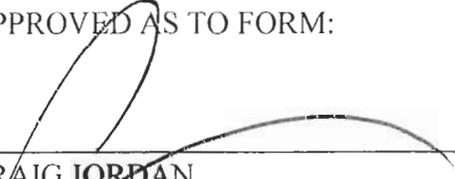
By 

President



BARBARA SOMMER, Individually

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