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LUTHER D. THOMAS, Clerk
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

FEDERAL TRADE COMMISSION, Plaintiff, v. ALYON TECHNOLOGIES, INC., a Delaware corporation; TELCOLLECT, INC., a New York corporation; and STEPHANE TOUBOUL, individually and as an officer of Alyon Technologies, Inc., Defendants.	Civ. No. ______ COMPLAINT 1:03-CV-1297

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

1. The Commission brings this action under Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, and the Telephone Disclosure and Dispute Resolution Act of 1992 ("TDDRA"), 15 U.S.C. § 5701 et seq., to secure a permanent injunction, preliminary injunctive relief, rescission of contracts, restitution, disgorgement, and other equitable relief for defendants' unfair or deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C.

§ 45(a), and the FTC's Trade Regulation Rule Pursuant to TDDRA (the "Pay-Per-Call Rule" or "Rule"), 16 C.F.R. Part 308.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 53(b), 57b, and 5711.

3. Venue in the United States District Court for the Northern District of Georgia is proper under 28 U.S.C. §§ 1391(b)-(d), and 15 U.S.C. § 53(b).

PLAINTIFF

4. Plaintiff, the Federal Trade Commission, is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41 et seq. 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 also enforces the Pay-Per-Call Rule, which, inter alia, regulates the billing and collection for videotext services accessed as telephone-billed purchases. The Commission is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act, and the Pay-Per-Call Rule, in order to secure such equitable relief as may be appropriate in each case. 15 U.S.C. §§ 53(b), 57b, and 5711(c).

DEFENDANTS

5. Defendant Alyon Technologies, Inc., ("Alyon") is a Delaware corporation with its office and principal place of business at One Harmon Plaza, Seacaucus, NJ, that has engaged in the acts and practices set forth in this complaint. Defendant Alyon transacts or has transacted business in the Northern District of Georgia.

6. Defendant TelCollect, Inc., ("TelCollect") is a New York corporation with its office and principal place of business at 5555 Triangle Pkwy, Norcross, GA. Defendant TelCollect transacts or has transacted business in the Northern District of Georgia.

7. Defendant Stephane Touboul ("Touboul") is the President and CEO of defendant Alyon. At all 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 Alyon set forth in this complaint. Defendant Touboul transacts or has transacted business in the Northern District of Georgia.

COMMERCE

8. At all times material to this complaint, the defendants' course of business, including the acts and practices alleged herein, has been in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFINITIONS

9. For the purposes of this Complaint, the following definitions shall apply:

A. "Line subscriber" means an individual or entity who has arranged to obtain local telephone service provided through an assigned telephone number, and to be billed for such service on a monthly (or other periodic) basis.

B. "Videotext services" means visual (and in some instances audio) information and entertainment services offered over the Internet through individual World Wide Web sites ("websites").

C. "Service vendor" or "vendor" means an entity that offers videotext or other services that are billed to line subscribers either on the telephone bills received by line subscribers or on other bills sent directly to the line subscribers.

D. "Alyon defendants" means defendant Alyon and defendant Touboul.

DEFENDANTS' BUSINESS PRACTICES

10. Alyon, TelCollect, and Touboul, alone or in concert with other unnamed persons or entities, provide or have provided a billing system to service vendors (hereinafter referred to as "the Alyon billing system") that permits the vendors to charge consumers whose telephone lines were allegedly used to access the vendors' videotext services on a per-minute basis. The Alyon billing system is touted as an alternative method of payment for consumers who do not wish to place such charges on their credit cards.

11. To use the Alyon billing system, consumers must download on their computer a modem-dialing software program ("dialing program") offered through the service vendors' websites. First, consumers must select the option to access vendor's videotext services without a credit card. Then, consumers must select "modem/ISDN" as the type of Internet connection method used by their computer. After selecting this connection method, a new web page loads, containing a "disclosure statement" of the "terms of services" that consumers must "accept" before being able to access vendors' videotext services by clicking "I Accept."

12. The material terms of service, including the cost and the method by which consumers will be billed, are often not

clearly and conspicuously disclosed. In numerous instances, the disclosure statement is presented in the form of a text box that contains only a few lines of text at any one time. To print out the full text of the disclosure statement requires up to four or more pages. To accept the terms of service, consumers need not scroll through the text, they need only to click "I Accept."

13. According to defendants, after consumers click "I Accept," they must click "Connect." Then, the dialing program disconnects the consumer's modem from the consumer's normal Internet Service Provider ("ISP") and reconnects the consumer's modem to the Internet through a telephone connection to Alyon's network. The consumer may then access the service vendor's videotext services. The consumer is charged $4.99 for each minute he or she is connected to the Internet via Alyon's network.

14. In numerous instances, the dialing program is downloaded to a consumer's computer without the knowledge or consent of the line subscriber whose telephone line is connected to the computer. In those instances, the dialing program still disconnects the line subscriber's modem from the line subscriber's normal ISP and reconnects to the Internet through Alyon's network via a telephone connection terminating in New Jersey. The defendants charge the line subscriber, or the person

the defendants believe is the line subscriber, $4.99 for each minute the line subscriber's computer is connected to the Internet via Alyon's network.

15. When a consumer uses the dialing program to access a vendor's videotext services, a system known as Automatic Number Identification ("ANI") is used to capture the telephone number from which the call is being placed. Using ANI information, defendants identify the consumer who they believe is the line subscriber responsible for the captured telephone number, and send that consumer a bill. Defendants make no attempt to determine whether the person they are billing downloaded the dialing program, or viewed the vendor's videotext services, or authorized anyone else to do so.

16. Since at least June 2002, the Alyon defendants, themselves or using the services of defendant TelCollect or other agents, have mailed bills directly to the line subscribers whose telephone lines purportedly were used to access vendors' videotext services through the Alyon billing system. The defendants initially send bills that list Alyon's name at the top to consumers, and include a Post Office Box number to which consumers are instructed to return their payments. These bills also list a toll-free number for consumers to call if they have

any questions about the bill, and direct consumers to access Alyon's website at www.alyon.net for customer service.

17. The bills include a statement that charges are for "Pay Per Use Internet Access to Proprietary Content as an Entertainment Fee." The second page of each bill lists any calls purportedly made using the dialing program. Each call is billed at a rate of $4.99 per minute with an offsetting credit of $0.10 per minute for "LD charges." The bills are sent to consumers with a "due date" less than two weeks from the date of the invoice. In numerous instances, consumers receive their first bill three or four days before payment is due.

18. The bills also provide a notice of customers' billing rights, which states that the "rights and obligations of the customer and the billing entity are provided under the Telephone Disclosure and Dispute Resolution Act." This notice also states that consumers must provide notification of any billing error in writing to Alyon's P.O. Box in Norcross, GA within 30 days after the mailing date of the first bill. In numerous instances, after receiving written notices of billing errors from consumers, defendants do not forgive the charges, nor do they conduct a reasonable investigation into the validity of the charges and notify the customers of why they are sustaining the charges. Instead, defendants simply subject complainants to additional

billing and collection efforts, and in some instances directly or indirectly threaten to adversely affect a complainant's credit history.

19. In the vast majority of instances, consumers who do not pay after receiving their first bill receive a second bill. Defendants mail the second bill less than thirty days from the invoice date of the first bill. The second bill states that payment is necessary to prevent collection activity.

20. Since at least September 2002, defendant TelCollect has mailed bills to consumers that list TelCollect's name at the top. After a consumer receives two bills listing Alyon's name, Defendant TelCollect mails bills to consumers stating that the "delinquent account formerly owed to Alyon Technologies Inc has been placed with TelCollect for recovery . . . This communication is from a debt collector." In numerous instances, the bills from TelCollect are dated less than 60 days from the first bill for charges owed to Alyon. In numerous instances, consumers who have received such bills have been told by Alyon representatives that consumers must contact TelCollect directly to resolve issues regarding their accounts because the accounts have been "moved to collections."

21. TelCollect, acting on Alyon's behalf, is responsible for collecting past due consumer payments sent to the P.O. Box in

Norcross, GA, which is listed on the bills it sends to consumers on TelCollect's letterhead. TelCollect also is responsible for answering the toll-free "customer service" number included on the third and any subsequent bills sent to consumers.

22. Many consumers who have received the defendants' bills do not know what they are being billed for. In many instances, neither the consumer nor anyone in the consumer's household has ever accessed Alyon's vendors' videotext services on the Internet, used their computer modem to make such a call, or has ever authorized any person to do so. In other instances, a line subscriber has discovered that a minor in the line subscriber's household, or another who does not have the line subscriber's authorization, has accessed videotext services using the Alyon billing system.

23. In numerous instances, consumers who have called Alyon's toll-free number to inquire about the charges that appear on the bills find it virtually impossible to reach an Alyon representative. Consumers report calling numerous times throughout a number of days, without ever receiving an answer. In numerous instances, consumers who have emailed defendant Alyon via its website have received only a form response. In the vast majority of instances, Alyon representatives represent that

consumers, as line subscribers, are responsible for the charges made over their telephone lines, regardless of the explanation.

24. In some instances, Alyon representatives offer to reduce the amount owed when a minor has accessed a vendor's website without the line subscriber's permission, but only if a line subscriber provides an affidavit and copy of the minor's birth certificate. In some other instances, Alyon, through its representatives and its website, represents to line subscribers that they must provide an affidavit and proof from their telephone exchange carrier that no call was made to Alyon's servers before Alyon will remove the charges.

25. Consumers whose accounts have been "moved to collection" by TelCollect, and who call defendant TelCollect's toll-free number, also find it difficult to reach a TelCollect representative. Consumers report calling numerous times throughout a number of days, only to reach a busy signal. Those consumers who are able to speak with a TelCollect representative have experienced accusatory and unyielding treatment in response to their attempts to dispute the charges and explain why the billing is in error. TelCollect representatives have represented to consumers that, regardless of the explanation, line subscribers are responsible for the charges made over their telephone lines. TelCollect representatives have also threatened

to adversely affect the credit histories of consumers who withhold payment of disputed amounts.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

26. 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

DECEPTIVE REPRESENTATION THAT CONSUMERS' TELEPHONE LINES WERE USED TO ACCESS VIDEOTEXT SERVICES

27. Defendants bill consumers for videotext services that they represent, expressly or by implication, were provided through the consumers' telephone lines using defendants' dialing program.

28. In truth and in fact, in numerous instances, the videotext services were not provided through the consumers' telephone lines using defendants' dialing program.

29. Therefore, the representation set forth in paragraph 27 is false and misleading and constitutes a deceptive practice in violation of Section 5 of the FTC Act.

COUNT II

DECEPTIVE REPRESENTATION OF LINE SUBSCRIBER'S LIABILITY

30. Defendants represent, expressly or by implication, that because a line subscriber's telephone was used to access

videotext services through defendants' dialing program, the line subscriber is legally obligated to pay defendants for those videotext services.

31. In truth and in fact, in numerous instances, line subscribers are not legally obligated to pay defendants for videotext services accessed via defendants' dialing program using the line subscribers' telephone lines.

32. Therefore, the representation set forth in paragraph 30 is false and misleading and constitutes a deceptive practice or act in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT III

UNFAIR UNAUTHORIZED BILLING

33. In numerous instances, based on the use of a line subscriber's telephone line to call a domestic telephone number in order to access paid videotext services using defendants' dialing program, defendants, directly or through an intermediary, bill, attempt to collect, and collect charges from line subscribers who did not themselves access videotext services, or authorize anyone else to do so.

34. A line subscriber cannot reasonably avoid defendants' billing and collection efforts for videotext services accessed through the line subscriber's telephone line because a line

subscriber cannot reasonably anticipate or prevent charges incurred through use of his or her telephone line to domestic telephone numbers using defendants' dialing program.

35. Defendants' practice of billing, attempting to collect, and collecting charges from line subscribers who did not themselves access videotext services provided over domestic telephone lines using the defendants' dialing program, or authorize anyone else to do so, causes substantial injury to consumers that is not outweighed by countervailing benefits to consumers or competition.

36. Therefore, defendants' practice, as alleged in paragraph 33, is unfair and violates Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT IV

UNFAIR UNAUTHORIZED DIALING PROGRAM DOWNLOAD

37. In numerous instances, the Alyon defendants' dialing programs are downloaded onto line subscribers' computers without their authorization. The dialing programs then cause the line subscribers' telephone lines to dial a telephone number in New Jersey to access videotext services for which defendants bill; cause to be billed to; or collect, attempt to collect or arrange for the collection of payment from the line subscriber.

38. Because line subscribers can neither reasonably block either defendants' dialing programs from their computers nor block the use of their telephone lines to make long distance calls, they cannot reasonably avoid the use of defendants' dialing programs to access videotext services using the line subscribers' telephone lines. Therefore, line subscribers cannot reasonably avoid billing and collection efforts for videotext services accessed through defendants' dialing programs and the line subscribers' telephone lines.

39. The Alyon defendants' practice of downloading dialing programs to line subscribers' computers that access videotext services through long distance telephone calls without the line subscribers' authorization causes substantial injury to the consumer that is not outweighed by countervailing benefits to consumers or competition.

40. Therefore, the defendants' practice, as alleged in paragraph 37, is unfair and violates Section 5 of the FTC Act, 15 U.S.C. § 45.

VIOLATIONS OF THE PAY-PER-CALL RULE

41. Section 308.7 of the Commission's Pay-Per-Call Rule provides inter alia, dispute resolution rights for consumers seeking to dispute charges for telephone-billed purchases.

42. Under Section 308.7(a)(6) of the Rule, a telephone-billed purchase is "any purchase that is completed solely as a consequence of the completion of the call or a subsequent dialing, touch tone entry, or comparable action of the caller. Such term does not include: (i) A purchase by a caller pursuant to a preexisting agreement with a vendor; (ii) Local exchange telephone services or interexchange telephone services or any service that the Federal Communications Commission determines by rule -- (A) Is closely related to the provision of local exchange telephone services or interexchange telephone services; and (B) Is subject to billing dispute resolution procedures required by Federal or state statute or regulation; or (iii) The purchase of goods or services that is otherwise subject to billing dispute resolution procedures required by Federal statute or regulation."

43. In numerous instances, defendants bill line subscribers for videotext services purchased as the result of the completion of a call from the line subscribers' telephone lines. Defendants' bills therefore contain charges for telephone-billed purchases.

44. Under Section 308.7(a)(1) of the Rule a "billing entity" is "any person who transmits a billing statement to a customer for a telephone-billed purchase, or any person who

assumes responsibility for receiving and responding to billing error complaints."

45. As described above, both Alyon and TelCollect transmit billing statements to customers for telephone-billed purchases and assume responsibility for receiving and responding to billing error complaints. They are therefore billing entities.

46. Under Section 308.7(b) of the Rule, a customer has 60 days after a billing entity transmits the first billing statement for a telephone-billed purchase to initiate a billing review.

47. Under Section 308.7(d) of the Rule, once a customer has submitted notice of billing error, the billing entity must, inter alia, either forgive the charge or: (1) send a written acknowledgment to the customer including a statement that any disputed amount need not be paid pending investigation of the billing error, no later than forty (40) days after receiving the notice; (2) conduct a reasonable investigation (including, where appropriate, contacting the vendor or providing carrier); and, (3) where a billing error has occurred, correct the billing error and credit the customer's account for any disputed amount and any related charges, and notify the customer of the correction or, where it has determined no billing error occurred, transmit an explanation to the customer setting forth the reasons why it has determined that no billing error occurred.

48. Under Section 308.7(g) of the Rule, once a customer has submitted notice of a billing error to a billing entity, the customer need not pay, and the billing entity may not try to collect, any portion of any required payment that the customer reasonably believes is related to the disputed amount until the billing entity receiving the notice has conducted a reasonable investigation and either corrected the charge or determined that the charge is not in error, or set forth the reasons why it has determined that no billing error occurred.

49. Under Section 308.7(i) of the Rule, once a billing entity has received notice of a billing error, the billing entity may not "threaten directly or indirectly to report adverse information to any person because of the customer's withholding payment of the disputed amount or related charges, until the billing entity has met the requirements of § 308.7(d) and allowed the customer as many days thereafter to make payment as prescribed by § 308.7(d)(3)(ii)."

50. In order to ensure that consumers are aware of their rights to dispute charges for telephone-billed purchases, Section 308.7(n) of the Rule requires billing entities to notify their customers of their dispute resolution rights.

51. Pursuant to Section 18(d)(3) of the FTC Act and Sections 201(a)(8) and (c) of the Telephone Disclosure and

Dispute Resolution Act, 15 U.S.C. §§ 57a(d)(3) and 5711(a)(8) and (c), a violation of the Pay-Per-Call Rule constitutes an unfair or deceptive practice in violation of Section 5(a)(1) of the FTC Act, 15 U.S.C. § 45(a)(1).

COUNT V

FAILURE TO COMPLY WITH BILLING DISPUTE RESOLUTION PROCEDURES REQUIRED BY THE PAY-PER-CALL RULE

52. In numerous instances, in connection with their activities as "billing entities," as defined by Section 308.7(a)(1) of the Rule, for "telephone-billed purchases," as defined by Section 308.7(a)(6) of the Rule, Defendants have violated Section 308.7 of the Pay-Per-Call Rule by, inter alia,

(a) after receiving notices of billing errors from customers, failing to either correct billing errors and credit the accounts; or to transmit explanations of why the billing entity has determined, after conducting a reasonable investigation, that no billing errors have occurred;

(b) attempting to collect disputed amounts from customers after such customers have submitted notices of billing errors to defendants but before the defendants have complied with Section 308.7(d) of the Pay-Per-Call Rule; or

(c) threatening directly or indirectly to report adverse information because of customers' withholding of payment of disputed amounts, after such customers have submitted notices of billing errors to defendants but before the defendants have complied with Section 308.7(d) of the Pay-Per-Call Rule; or

(d) failing to provide customers with accurate notices of their dispute resolution rights under the Rule.

CONSUMER INJURY AND UNJUST ENRICHMENT

53. Consumers throughout the United States have suffered and continue to suffer 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 acts or practices. Absent injunctive relief by this Court, defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

54. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and other ancillary relief, including consumer redress, disgorgement and restitution to prevent and remedy any violations of any provision of law enforced by the Federal Trade Commission.

55. Section 19 of the FTC Act, 15 U.S.C. § 57b, and Section 201(a)(8) of TDDRA, 15 U.S.C. § 5711(a)(8), authorize this Court to grant such relief as the Court finds necessary to redress

injury to consumers or other persons resulting from defendants' violations of the Pay-Per-Call Rule.

56. Any billing entity who fails to comply with 16 C.F.R. §§ 308.7(d),(g), or (i) forfeits any right to collect from the customer any amount indicated by the customer to be in error, up to $50 per transaction. 16 C.F.R. § 308.7(j).

57. This Court, in the exercise of its equitable jurisdiction, may award other relief to prevent or remedy injury or to prevent unjust enrichment resulting from the defendants' law violations.

PRAYER FOR RELIEF

WHEREFORE, plaintiff requests that this Court, as authorized by Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, and pursuant to its own equitable powers:

1. Award plaintiff such preliminary injunctive and other 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;

2. Permanently enjoin the defendants from violating the FTC Act;

3. Permanently enjoin the defendants from violating the Pay-Per-Call Rule, 16 C.F.R. Part 308;

4. Award such relief as the Court finds necessary to redress injury to consumers resulting from the defendants' violations of the FTC Act and Pay-Per-Call Rule, including but not limited to, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies; and

5. 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.

Respectfully Submitted,

Peter Lamberton 5/13/03

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