

JUL 10 2003

LUTHER D. THOMAS, Clerk
By:  Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

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.

CIVIL ACTION NO.
1:03-CV-1297-RWS

ORDER

Plaintiff, the Federal Trade Commission ("FTC"), filed this case on May 13, 2003, alleging that Defendants Alyon Technologies, Inc., Telcollect, Inc., and Stephane Touboul (collectively, "Defendants" or "Alyon") are engaging in unfair and deceptive trade practices in violation section 5 of the Federal Trade

Commission Act ("FTC Act"), 15 U.S.C. § 45, the Telephone Disclosure and Dispute Resolution Act of 1992 (TDDRA), Pub. L. No. 102-556, 106 Stat. 4181-95 (codified as amended in scattered sections of 15 U.S.C. and 47 U.S.C.), and the FTC's Trade Regulation Rule pursuant thereto (the "Pay-Per-Call Rule"), 16 C.F.R. Part 308. Now before the Court for consideration is Plaintiff's Motion for Preliminary Injunction [2-1]. Also pending are Defendants' Motion for Order Granting Limited Partial Discovery [7-1] and Motion for Modifying Order Regarding Expedited Discovery [7-2]. Having considered the written record, the evidence submitted by the parties, the arguments of counsel, and having conferred with all parties, the Court enters the following Order.¹

As an initial matter, the Court entered an Order on June 2, 2003 that addressed the matters raised in Defendants' Motion for Order Granting Limited Partial Discovery [7-1] and Motion for Modifying Order Regarding Expedited Discovery [7-1]. Accordingly, these Motions are hereby **DENIED AS MOOT**.

Defendants have voluntarily agreed to comply with all of the

¹At this preliminary stage, the Court declines the parties' invitations to make findings of fact.

requirements set forth below. Further, Defendants have submitted evidence showing that it has already implemented these requirements on a nationwide basis. It is therefore **ORDERED**:

I. Avoidance of Violations of Section 5 of the FTC Act—Deceptive Practices

In connection with the advertising, promotion, and offering of goods or services for sale in commerce, the Defendants shall not omit to state any material fact or make any express or implied representation of material fact that is knowingly false or misleading, in any manner, orally or in writing, to any consumer or entity. Issuing a bill to a consumer on the good faith belief that the consumer is responsible to pay the charges reflected in the bill shall not be a violation of this provision. Adherence by the Defendants to the procedures established in Section II herein shall be deemed sufficient to provide Defendants a good faith belief that the consumer is responsible to pay the charges.

II. Avoidance of Violations of Section 5 of the FTC Act—Unfairness

In connection with the advertising, promotion, and offering of Videotext Services, the Defendants shall not bill, collect, or attempt to collect payment

from a consumer without first: (1) fully disclosing all material terms of the sale to the consumer, or a person authorized by the consumer to incur the charge, before the charge is incurred; and (2) verifying the identity of the consumer who is incurring the charge or the fact that a person other than the consumer has been authorized by the consumer to incur the charge. An example of a preamble that fully complies with the disclosure requirement is attached hereto as Exhibit A. The verification requirement may be met by soliciting identifying information that is unique to the consumer to be charged (such as a portion of the consumer's social security number), is not likely to be widely known, and the accuracy of which the Defendants may reliably verify. If after three (3) attempts the user has failed to correctly enter unique identifying information that allows Defendants to match the telephone line subscriber's identity with the reverse telephone number directories utilized by Defendants, then the connection to the Alyon Number will be terminated and no bill will be sent to the telephone line subscriber identified in the telephone lookup directory for the ANI number. This method of consumer authorization and verification shall provide Defendants a good faith basis on which to issue a bill to the consumer.

III. Avoidance of Violations of the Pay-Per-Call Rule

Defendants shall not violate or assist others in violating the billing dispute resolution provisions of the Pay-Per-Call Rule, 16 C.F.R. § 308.7. It shall not be a violation of this provision for the Defendants to complete their investigation of a billing dispute based on records available to them. It shall also not be a violation of this provision for the Defendants to then request that the consumer provide (within the longer of one billing cycle or ten (10) days) either payment or information permitting the Defendants to confirm whether the bill was in error when the alleged error involves information within the control of the disputing consumer.

IV. Consumer Dispute Resolution Mechanism

Alyon shall provide restitution to any consumers who have filed or, within ninety (90) days of the entry of this Order, file written complaints with the FTC and Alyon alleging that they were billed for access to an Alyon billed site and showing that:

A. They had not accessed any Videotext Services through Alyon and the bill they received from Alyon lists a "CONSUMER PHONE NUMBER" which was not a telephone line they were subscribed to at the time the charges

itemized on the bill were incurred;

B. They had never entered into an agreement for accessing Videotext Services provided through Alyon or that a minor who was not competent to enter into an agreement to bind the consumer without said consumer's authorization accessed Videotext Services through Alyon, or that the site was otherwise accessed without the consumer's authorization;

C. A minor using a computer in the consumer's household inadvertently became connected to Videotext Services through Alyon as a result of having opened a "Pop-up" dialogue box that appeared when the minor had visited a game site.

D. A minor using a computer in the consumer's household inadvertently became connected to Videotext Services through Alyon as a result of having clicked on a URL/web address that was embedded in an unsolicited e-mail message (i.e., "spam") that was received on the computer; or

E. They were otherwise unintentionally connected through Alyon to Videotext Services due to some technical error.

For purposes of this Order, a consumer seeking to establish that access to Videotext Services through Alyon was unauthorized shall provide the FTC and

Alyon with documentation as described below.

A. Consumers who claim that they had not accessed any Videotext Services through Alyon and the bill they received from Alyon lists a "CONSUMER PHONE NUMBER" which was not a telephone line they were subscribed to at the time the charges itemized on the bill were incurred must file a complaint with the FTC and Alyon. The FTC will then provide Alyon with a thirty (30) day opportunity to investigate the consumer's claim. If following its investigation of said claim Alyon has a good faith basis to believe that the consumer was responsible for the "CONSUMER PHONE NUMBER" billed at the time charges were incurred, then Alyon may request that the consumer execute an affidavit in a form attached hereto as Exhibit B.

B. Consumers who claim that a minor who was not competent to enter into an agreement to bind the consumer and who did not have the consumer's authorization to access Videotext Services through Alyon must file a complaint with the FTC and Alyon and execute an affidavit in the form attached hereto as Exhibit C. Consumer claims regarding unauthorized access by a minor shall include any claims alleging that a minor using a computer in the consumer's household inadvertently became connected to Videotext

Services through Alyon as a result of having opened a "Pop-up" dialogue box that appeared when they had visited a game site, or as a result of having clicked on a URL (i.e., web address) that was embedded in an unsolicited e-mail message (i.e., "spam") that was received on their computer. The FTC shall provide Alyon with a thirty (30) day opportunity to investigate and/or rebut the consumer's claim.

C. Consumers who claim that they never entered into agreements for accessing Videotext Services provided through Alyon or that the site was otherwise accessed without their authorization, including any consumers who were otherwise unintentionally connected through Alyon to Videotext Services due to some technical error, must file a complaint with the FTC and Alyon and execute an affidavit in the form attached hereto as Exhibit D in which they detail the nature of the disputed charges. The FTC shall provide Alyon with a thirty (30) day opportunity to investigate and/or rebut the consumer's claim. If following its investigation of said claim Alyon has a good faith basis to believe that the consumer was responsible for the billing, then Alyon may request the consumer to provide a copy of a long distance bill showing that no long distance charges were incurred for a call to an Alyon number at the time of

charges itemized on the disputed bill.

The FTC shall not be required to turn over any documentation or information to Alyon that contains any personal identifiable or personal financial information of any consumer. In the event Alyon disputes a consumer's claim of an unauthorized access, a third party arbiter agreed upon by Alyon and the FTC shall be the final arbiter of whether said consumer is entitled to restitution in accordance with this Order.

For purposes of this Order, the term "restitution" shall be either a refund equal to the amount paid to Alyon that is disputed by any consumer or absolution of any outstanding disputed debt that Alyon is asserting against a consumer. To the extent Alyon absolves any outstanding debts being asserted against any consumer, Alyon shall waive all rights to collect such debts and shall not sell or assign any debts to any third parties for collection. Further, in the event that Alyon has reported debts of any consumer to any credit reporting agencies, Alyon shall contact said credit reporting agencies and have the debt removed from the credit histories of any such consumers. To the extent any consumer redress is paid to a consumer pursuant to this Section, that redress will be the only monetary payment made by Alyon to such consumer regardless

of whether Alyon enters into any agreement with any other entity concerning the same subject matter.

V. Monitoring

During the pendency of this litigation, the FTC is authorized to monitor the Defendants' compliance with this Order. For purposes of the compliance monitoring authorized by this Section, the FTC may use representatives posing as consumers. When posing as consumers, the FTC's representatives are authorized to communicate directly with the Defendants, the Defendants' employees, any entity managed or controlled in whole or in part by any of the Defendants, or any entity acting as an agent of any of the Defendants, without the necessity of identification, prior notice, or authorization by the Defendants or their counsel.


If the FTC should detect an alleged violation of this Compliance Order, it shall notify counsel for the Defendants in writing. The Defendants shall have ten (10) court days from receipt of such notice to respond to the FTC in writing and state whether the Defendants will cure the alleged violation or dispute that the observed condition exists or is a violation. If the Defendants agree to cure, they shall have thirty (30) calendar days from the FTC's written notice to effect

such a cure and, if at the end of the thirty days, the FTC is dissatisfied, the FTC may contact this Court to schedule a conference on the subject. If the Defendants dispute that the observed condition exists or is a violation and the FTC is dissatisfied with the Defendants' explanation, the FTC may contact this Court to schedule a conference on the subject.

Conclusion

Defendants' Motion for Order Granting Limited Partial Discovery [7-1] and Motion for Modifying Order Regarding Expedited Discovery [7-2] are hereby **DENIED AS MOOT**. Plaintiff's Motion for Preliminary Injunction [2-1] is hereby **DENIED AS MOOT**.

SO ORDERED this 10th day of July, 2003.



RICHARD W. STORY
UNITED STATES DISTRICT JUDGE

accessdialer

ONE STEP AWAY FROM **HARDCORE ACCESS**

IMPORTANT PREAMBLE

By checking "I Agree" and then clicking "Please Enter Now", you will be connected to a pay-per-call service featuring adult content.

The provider of the pay-per-call service is Electronic Group Interactive.

WHO MAY ACCESS THIS SITE

YOU MUST BE 18 YEARS OF AGE OR OLDER (21 IN SOME AREAS) TO USE THIS SERVICE. IF YOU ARE NOT, CLICK "I DISAGREE" NOW!
TO USE THIS SOFTWARE AND ACCESS THE WEB SITE, YOU MUST BE THE TELEPHONE LINE SUBSCRIBER OR HAVE THE AUTHORIZATION OF THE TELEPHONE LINE SUBSCRIBER TO INCUR CHARGES AND BILL THE TELEPHONE LINE SUBSCRIBER.
THE TELEPHONE LINE SUBSCRIBER WILL BE BILLED \$4.99 PER MINUTE FOR ACCESSING THIS SITE. IF YOU ARE NOT THE TELEPHONE LINE SUBSCRIBER OR DO NOT HAVE AUTHORIZATION TO BILL THE TELEPHONE LINE SUBSCRIBER FOR CHARGES INCURRED, CLICK "I DISAGREE."

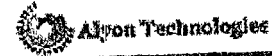
BILLING FOR ACCESS TO THIS SITE

When you click "I AGREE" and "Please Enter Now", a dialer program will interrupt the modem connection to your usual Internet service provider. Your modem will then dial a domestic long distance number in the 201 area code and reconnect to the Internet through that long distance number. While you are accessing the web site, you may be charged a fee for the long distance service by your long distance carrier. In addition, the telephone line subscriber will be billed \$4.99 per minute as an entertainment fee for access to the web site.

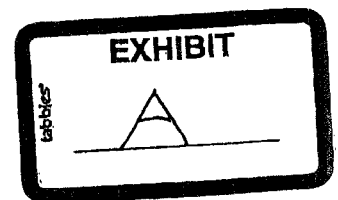
I AGREE

I DISAGREE

POWERED BY



Legal Notice Copyright 2003 Electronic Group Interactive S.L.



**ALYON
Technologies**

**Wrong Number
Affidavit**

Send information to:
Alyon Technologies
PO Box 923299
Norcross, GA 30010-3299

Customer Information

Name: _____
 Address: _____
 City/State/Zip Code: _____
 Home Phone Number: _____
 Work Phone Number: _____
 Alyon Technologies Account Number: _____
 Alyon Technologies Billing Phone Number: _____

Dispute Information

Nature of Disputed Charges: Wrong Number
 Amount of Disputed Charges: \$ _____
 Date(s) of Invoice in Dispute: _____

Give a brief explanation of the dispute (explain why you think you were billed for a call you are not responsible for):

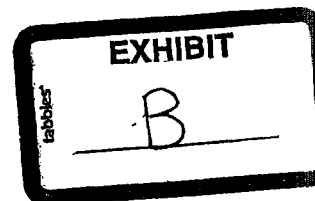
If you need additional space, please use the reverse of this form. Responses will be sent to the address listed on the account. To be eligible for a refund, you must affirm that the information you are submitting is truthful and accurate to the best of your knowledge.

I declare that the foregoing is true and correct to the best of my knowledge and make this statement subject to the penalties for perjury under 18 U.S.C. §1001 and 28 U.S.C. §1746.

Signature

Print your name

Date



**ALYON
Technologies**

Minor Access Affidavit

Send information to:
Alyon Technologies
PO Box 923299
Norcross, GA 30010-3299

Customer Information

Name: _____
 Address: _____
 City/State/Zip Code: _____
 Home Phone Number: _____
 Work Phone Number: _____
 Alyon Technologies Account Number: _____
 Alyon Technologies Billing Phone Number: _____

Dispute Information

Nature of Disputed Charges: Minor access
 Amount of Disputed Charges: \$ _____
 Date(s) of Invoice in Dispute: _____

Give a brief explanation of the dispute (explain why you think a child incurred the charges): _____

If you need additional space, please use the reverse of this form. Responses will be sent to the address listed on the account. To be eligible for a refund, you must affirm that the information you are submitting is truthful and accurate to the best of your knowledge.

I declare that the foregoing is true and correct to the best of my knowledge and make this statement subject to the penalties for perjury under 18 U.S.C. §1001 and 28 U.S.C. §1746.

Signature

Print your name

Date



**ALYON
Technologies**

No Call Affidavit

Send information to:
Alyon Technologies
PO Box 923299
Norcross, GA 30010-3299

Customer Information

Name: _____
Address: _____
City/State/Zip Code: _____
Home Phone Number: _____
Work Phone Number: _____
Alyon Technologies Account Number: _____
Alyon Technologies Billing Phone Number: _____

Dispute Information

Nature of Disputed Charges: Never accessed a dialer program which required the user to click twice to accept the service.

Amount of Disputed Charges: \$ _____

Date(s) of Invoice in Dispute: _____

Give a brief explanation of the dispute: _____

If you need additional space, please use the reverse of this form. Responses will be sent to the address listed on the account.

To be eligible for a refund, you must provide proof that the billed call was not placed. This proof may take the form of a copy of a long distance bill showing that no long distance charges were incurred for the call. You must also affirm that the information you are submitting is truthful and accurate to the best of your knowledge.

I declare that the foregoing is true and correct to the best of my knowledge and make this statement subject to the penalties for perjury under 18 U.S.C. §1001 and 28 U.S.C. §1746.

Signature

Print your name

Date

