

David Fix
David Torok
Renard Francois
Attorneys for Plaintiff
600 Pennsylvania Avenue, NW H-238
Washington, DC 20580
(202) 326-3298
(202) 326-2251
(202) 326-3395 FAX

Blaine T. Welsh
Assistant United States Attorney
701 E. Bridger Ave., Ste. 800
Las Vegas, NV 89101
(702) 388-6336

RECEIVED
MAR 27 12 03 PM '02
BY _____

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

**FEDERAL TRADE COMMISSION,
Plaintiff,**

v.

BTV INDUSTRIES,

RIK COVELL,

ADAM LEWIS,

**NATIONAL COMMUNICATIONS TEAM,
INC.,**

LO/AD COMMUNICATIONS CORP.,

and

NICHOLAS LOADER

Defendants.

CV-S-02-0437-LRH-PAL

**COMPLAINT FOR PERMANENT INJUNCTION
AND OTHER EQUITABLE RELIEF**

Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), for its Complaint

alleges as follows:

1. The Commission brings this action under Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), and 57b, the Telephone Disclosure and Dispute Resolution Act of 1992 ("TDDRA"), 15 U.S.C. § 5701 *et seq.*, to obtain preliminary and permanent injunctive relief, restitution, disgorgement, and other equitable relief for Defendants' deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a) and the FTC's Pay-Per-Call Rule, 16 C.F.R. Part 308.3 and to obtain other equitable relief, including but not limited to, rescission, restitution, and disgorgement, as is necessary in order to redress injury to consumers and the public interest from Defendant's violations of the FTC Act and the 900 Number Rule.

JURISDICTION AND VENUE

2. Subject matter jurisdiction is conferred upon this Court by 15 U.S.C. § 53(b), 57b, 5711, and 6105, and 28 U.S.C. §§1331, 1337(a), and 1345.

3. Venue in the United States District Court for the District of Nevada is proper under 15 U.S.C. § 53(b) and 28 U.S.C. §§ 1391(b) and (c).

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 enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits deceptive acts or practices in or affecting commerce. The Commission is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act and to secure such other equitable relief as

may be appropriate in each case, including redress and disgorgement. 15 U.S.C. § 53(b). The FTC also enforces the Pay-Per-Call Rule, which regulates the advertising, operation, billing, and collection of audiotext services accessed through 900 and toll-free telephone numbers. The Commission may initiate federal district court proceedings to enjoin violations of the FTC Act and the Pay-Per-Call Rule and to secure such equitable relief as is appropriate in each case, including restitution for injured consumers. 15 U.S.C. §§ 53(b), 57b, 5711(c), and 6102(c).

DEFENDANTS

5. Defendant BTV Industries ("BTV") is a Spanish corporation located at El Cangrejo 15 Mala, Lanzarote, 35543 Canary Islands ES. BTV transacts or has transacted business in the District of Nevada and throughout the United States.

6. Defendant Rik Covell ("Covell") at all times material to this complaint, acting alone or in conjunction with others, has formulated, directed, controlled, or participated in the acts and practices alleged in this complaint. He transacts or has transacted business in the District of Nevada and throughout the United States.

7. Defendant Adam Lewis ("Lewis") at all times material to this complaint, acting alone or in conjunction with others, has formulated, directed, controlled, or participated in the acts and practices alleged in this complaint. He transacts or has transacted business in the District of Nevada and throughout the United States.

8. Defendant National Communications Team, Inc. ("NCT") is a Nevada corporation located at 4302 Clyde Court, Reno, Nevada 89509. NCT transacts or has transacted business in the District of Nevada and throughout the United States.

9. Defendant LO/AD Communications, Inc., also known as LO/AD Communications, Corp. ("LO/AD"), is a California corporation located at 150 E. Colorado Blvd. Suite 210, Pasadena, California 91105. LO/AD transacts or has transacted business in the District of Nevada and throughout the United States.

10. Defendant Nicholas Loader ("Loader") is the president, treasurer, secretary, director, and sole stock owner of NCT. At all times material to this complaint, acting alone or in conjunction with others, Loader has formulated, directed, controlled, or participated in the acts and practices alleged in this complaint. He transacts or has transacted business in the District of Nevada and throughout the United States.

11. As more fully described in paragraphs 24-57, Defendants jointly participate in the conduct alleged in this complaint.

COMMERCE

12. At all times relevant to this complaint, Defendants have maintained a substantial course of trade in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFINITIONS

13. A "dialer program" is an executable computer program that can be sent from one computer to another on the Internet and, that, when downloaded onto the recipient's computer, is stored in one or several locations on the recipient's harddrive, and when activated calls a programmed telephone number.

14. An "icon" is a small picture associated with a computer program that, if clicked

on with the mouse, will launch that program on the user's computer.

15. "Internet" means a worldwide system of linked computer networks that use a common protocol (TCP/IP) to deliver and receive information. The "Internet" includes, but is not limited to, the following forms of electronic communication: electronic mail, the World Wide Web, newsgroups, Internet Relay Chat, and file transfer protocols.

16. "Line subscriber" means an individual or entity who has arranged with a Local Exchange Carrier ("LEC") to obtain local telephone service provided through an assigned telephone number and billed for such number on a monthly (or other periodic) basis.

17. "Local Exchange Carrier" or "LEC" means the local telephone company from which a line subscriber receives his or her telephone bill.

18. A "modem" is computer hardware, attached to or found inside a computer, which allows the computer to connect to the Internet or directly to another properly configured computer, sometimes referred to as a Bulletin Board System ("BBS"), via a standard analog telephone line. The modem translates the digital signals from a computer to analog signals so that they may be transmitted through the telephone network, and translates analog signals received through the telephone network to digital signals.

19. "Pay-Per-Call Rule" means the FTC's Trade Regulation Rule pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992, 16 C.F.R. Part 308.

20.. "Pay-Per-Call service" has the meaning provided for it in section 308.2(c) of the Pay-Per-Call Rule, 16 C.F.R. 308.2(c).

21. "Service vendor" or "vendor" means an entity that offers videotext or other

services (other than transmission of telecommunications) that are billed to line subscribers either on telephone bills received by the line subscriber or on other bills sent directly to the line subscriber.

22. "Videotext services" means visual (and possibly audio) information and entertainment services offered over the Internet through individual Web sites.

23. "World Wide Web" or "Web" means a system used on the Internet for cross-referencing and retrieving information. A "Web site" is a set of electronic documents, usually a home page and subordinate pages, readily viewable using a computer by anyone with access to the Internet, standard browser software, and knowledge of the Web site's location or address.

DEFENDANTS' BUSINESS PRACTICES

Defendants' Email Campaign

24. Defendants, or agents acting on their behalf, lure consumers to visit their Web sites through the dissemination of unsolicited commercial email, commonly known as spam. Defendants' spam typically contains a subject heading that indicates that the consumer receiving the message has won a thing of value. In numerous instances, the spam contain subject headings that state "Yahoo Sweepstakes Winner" and "You have just won a gift from Yahoo."

25. When the consumer opens the spam, the text of the spam states that the consumer has won a thing of value. For example, in numerous instances, Defendants' spam states that the consumer has won a Sony Playstation 2 (a video game console). Defendants' spam further represents that the consumer must click on a hyperlink provided in the spam to

collect the promised Playstation 2 or other thing of value.

26. When the consumer clicks on the hyperlink in an effort to claim the valuable item, the consumer is taken to a Web page that prominently features the "Yahoo!" logo at the top of the page and the Yahoo format and graphics. The Web site contains what purports to be a hyperlink to Yahoo's privacy policy and terms of service. At the bottom of the Web page is "Copyright (c) 2001 Yahoo, Inc. All rights reserved." Despite the appearance of this Web page, it does not belong to or have any connection with Yahoo, Inc.

27. The Yahoo look-alike page tells the consumer to press "yes" when a box indicating that the consumer is about to download software, commonly known as a dialog box, appears so that the software will be downloaded onto the consumer's computer. The Web page further instructs the consumer to connect toll-free to claim the valuable item. The look-alike page clearly displays a note, which the consumer does not have to scroll through the page to find. The note advises the consumer that he or she must connect and fill in his or her name and address in order to receive the valuable item.

28. When the consumer clicks "OK" in the dialog box, the consumer's computer downloads a dialer program. Defendants' dialer program places an icon on the consumer's computer desktop while, in numerous instances, also storing itself in several less visible files on the computer. The program instructs the consumer's computer to terminate the consumer's existing ISP modem telephone connection and to re-establish a modem telephone connection to the Internet through dialing a specific 900-number. In numerous instances, the dialer program is

called Yahoo_Connection_Starter.exe.

29. Upon completion of the download, a box containing a pre-set telephone number, commonly known as a dialer box, appears on the consumer's computer screen. The pre-set telephone number is a 900-number. The consumer's computer will dial this number if the consumer clicks "CONNECT." There is no cost information in the advertisement, adjacent to the 900-number, or anywhere in the dialer box. At the top of the dialer box is an advertisement. The advertisement states that "[y]ou are seconds away from the site voted #1 adult web portal on the net by porn resource weekly" and displays a woman in her underwear.

30. When the consumer clicks "connect" on the dialer box, another window, commonly known as a disclosure box, appears. In numerous instances, the initial window of the disclosure box contains extensive text and does not provide cost information that is visible to the consumer. If the disclosure box is not large enough, the cost information does not appear in the initial window of the disclosure box. If the disclosure box is large enough, the cost disclosure will appear in the initial window. The cost information, however, is neither prominently displayed nor is it presented in such a way that the consumer must at least scroll through it. After 109 words of text – in all capital letters – regarding the necessity to be at least 18 years of age to "use this service," the following cost disclosure occurs: "Warning: By using this software, your modem will dial a 900 PREMIUM RATE DOMESTIC TELEPHONE NUMBER (\$3.99 per minute). No Credit card is required to access this service, you will be charged up to \$3.99 per minute on your phone bill." Thus, in this disclosure box, only after being told that one can connect toll-free, the

consumer might see a cost disclosure.

31. If the consumer clicks "connect" again, the consumer's computer will be disconnected from his or her current Internet connection, which is typically not billed on a per minute basis, and reconnected to the Internet through a 900-number for which there is a substantial per minute charge -- as much as \$3.99 per minute. After connecting to Defendants' Web site through the 900-number, the consumer arrives at a Web site that contains sexually explicit images. Contrary to the initial representations, at no point does the consumer see a name and address form or receive any instructions on how he or she can receive the promised valuable item.

32. Defendants do not take any steps to insure that the telephone line subscriber that they ultimately bill for access to sexually explicit material is in fact the person that downloads and uses their modem-dialer program, or authorizes its use. Defendants do not know if the line subscriber's minor children, house guests or others with access to the modem line are the actual unauthorized users of the modem-dialer software.

33. Minor children seeking to receive a valuable item are particularly likely to accept at face value spam that claims that the recipient of the email has won a valuable item. In numerous instances, minors attempting to claim the valuable item have been connected to Defendants' Web sites through a 900-number. In these instances, the line subscribers were billed for the connection to Defendants' Web sites through a 900-number. In other instances, adults who had no authorization to incur these charges on the line subscriber's phone bill attempted to

claim the purported valuable item and were connected to Defendants' Web sites through a 900-number. In these instances also, the line subscribers were billed for the connection to Defendants' Web sites through a 900-number. Still, in other instances, adults who are the line subscribers attempted to claim the purported valuable item and were connected to Defendants' Web site through a 900-number.

34. While the consumer is accessing the Internet through a 900-number, the line subscriber for the telephone line attached to the modem is incurring charges on a per minute basis. The line subscriber is charged for the duration of their computer's connection to the 900-number caused by the download and use of Defendants' dialer program. In numerous instances, line subscribers are billed for the Internet connection while the Web site is downloading, often incurring significant charges before the Web site is displayed. In these instances, consumers incur charges before they see the sexually explicit images and determine that there is no address form and no valuable item to be claimed.

35. Because someone used their phone line dialed a 900-number, line subscribers are billed on their monthly telephone bill for these 900-number calls. The bill describes the access to adult content as a direct charge pay-per-call service for "Web Access 00." In numerous instances, line subscribers have no idea how they came to be charged by Defendants for access to their Web sites.

36. Defendants receive a substantial portion of the revenue collected from line subscribers by the local exchange carrier.

VIOLATIONS OF THE FTC ACT

37. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits unfair or deceptive acts or practices affecting commerce.

COUNT ONE

38. In numerous instances, Defendants, directly or through an intermediary, have represented, expressly or by implication, that a consumer has won a Sony Playstation 2, or some other valuable item, and a consumer can claim their Sony Playstation 2, or other valuable item, by clicking a series of hyperlinks and following the accompanying instructions.

39. In truth and in fact, the consumer has not won a Sony Playstation 2, or some other valuable item. In fact, consumers who have clicked on the hyperlink and followed the accompanying instructions in an attempt to claim their Sony Playstation 2, or valuable item, did not receive a valuable item, but rather were directed to a Web site via a 900-number that costs as much as \$3.99 per minute.

40. Therefore, the representations set forth in paragraph 38 are false and deceptive and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT TWO

41. In numerous instances, Defendants, directly or through an intermediary, have represented, expressly or by implication, that the sender of the spam is Yahoo, Inc. or a company

affiliated with Yahoo, Inc. and is authorized to display Yahoo's marks.

42. In truth and in fact, the sender of the spam is not Yahoo, Inc or any company affiliated with Yahoo, Inc. and is not authorized to display Yahoo's marks.

43. Therefore, the representations set forth in paragraph 41 are false and deceptive and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT THREE

44. In numerous instances, Defendants, directly or through an intermediary, have represented, expressly or by implication, that the spam recipient can be connected toll-free to a Web site to claim a free Sony Playstation 2, or other valuable item.

45. In truth and in fact, the spam recipients cannot be connected toll-free to a Web site to claim a free Sony Playstation 2, or other valuable item. Instead, in numerous instances, the recipients of the spam are connected to a sexually explicit Web site by means of a 900-number costing as much as \$3.99 per minute while he or she was connected to the Internet via the 900-number.

46. Therefore, the representations set forth in paragraph 44 are false and deceptive and constitute a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

VIOLATIONS OF THE PAY-PER-CALL RULE

47. The Commission's Pay-Per-Call Rule, 16 C.F.R. Part 308, became effective on November 1, 1993, and implements the requirements of the Telephone Disclosure and Dispute Resolution Act of 1992 ("TDDRA"), 15 U.S.C. § 5701 et seq. The Pay-Per-Call Rule establishes requirements for advertising and operating pay-per-call services requiring, *inter alia*, that a provider of pay-per-call service include cost and other disclosures in both advertisements and in an introductory message to the services (preamble).

48. Pursuant to section 18(d)(3) of the FTC Act and Sections 201(a)(8) and (c) of the TDDRA, 15 U.S.C. §§ 57a(d)(3) and 5711(a)(8) and (c), each 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 FOUR

49. Section 308.3 of the Pay-Per-Call Rule governs the advertising of pay-per-call services. Section 308.3(b)(1) of the Rule requires that, in any advertisement for a pay-per-call service, the provider of the service clearly and conspicuously disclose the cost of a call to access the service. Additionally Section 308.3(b)(2)(ii) requires that cost disclosures must be adjacent to every presentation of the 900-number.

50. Section 308.3(a)(5) of the Rule prohibits a provider of a pay-per-call service from using any representations in any advertisement that are contrary to, inconsistent with, or in mitigation of the cost disclosures required by Section 308.3(b)(1) of the Rule. Section 308.3(a)(5) also prohibits the provider of the service from using any audio, video, or print

technique in any advertisement for the service that is likely to detract significantly from the communication of the required cost disclosures.

51. In numerous instances, Defendants have created and have disseminated advertisements for pay-per-call services that violate Section 308.3 of the Pay-Per-Call Rule, including, but not limited to:

- a. advertisements that fail to disclose the cost of a call to the advertised service;
- b. advertisements that do not provide the cost disclosure adjacent to the 900-number; or
- c. advertisements that contain statements that are inconsistent with cost disclosures, including, but not limited to, statements that consumers should "click here to be connected toll free to claim their prize,"

52. Defendants' practices, as described in Paragraph 51, violate Section 308.3 of the Pay-Per-Call Rule. 16 C.F.R. § 308.3.

COUNT FIVE

53. Section 308.5(a) of the Rule requires that the provider of the pay-per-call service must provide an introductory disclosure message ("preamble") that describes material information listed in Section 308.5(a). Section 308.5(a) requires that the preamble be read in a slow and deliberate manner and at a reasonable volume.

54. Section 308.5(a)(3) requires the preamble to indicate to the caller that charges for the call begin, and that to avoid charges the call must be terminated, three seconds after a clearly discernable signal or tone indicating the end of the preamble.

55. Defendants' do not provide a preamble in a slow and deliberate manner and at a

reasonable volume and do not have a clearly discernable signal indicating that charges for the call begins, and that to avoid charges the call must be terminated, three seconds after a clearly discernable signal or tone indicating the end of the preamble.

56. Defendants' practices, as described in Paragraph 55, violate Section 308.5(a) of the Pay-Per-Call Rule. 16 C.F.R. § 308.5(a).

CONSUMER INJURY

57. Defendants' violations of Section 5 of the FTC Act, 15 U.S.C. § 45(a), and the Pay-Per-Call Rule, 16 C.F.R. Part 308, as set forth above, have caused and continue to cause substantial injury to consumers across the United States. Absent injunctive relief by this Court, the Defendants are likely to continue to injure consumers and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

58. 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 Commission.

59. 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.

60. Under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), this Court is authorized

to issue a temporary restraining order against Defendants' violating the FTC Act, as well as such ancillary relief as rescission of contracts, restitution, disgorgement of ill-gotten gains, and the refund of monies paid to redress the injury to consumers or others resulting from Defendants' violations of Section 5 of the FTC Act.

61. Providers of pay-per-call services are liable for refunds to consumers who paid for services provided in violation of the Pay-Per-Call Rule or any other Federal rule or law. Section 201(a)(2)(I) of TDDRA, 15 U.S.C. § 5711(a)(2)(I) and 16 C.F.R. § 308.5(k). Any billing entity who fails to comply with 16 C.F.R. §§ 308.7(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).

62. This Court, in the exercise of its equitable jurisdiction, may award other ancillary relief to remedy injury caused by Defendants' law violations.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the Federal Trade Commission, 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 all temporary and 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 Defendants from violating Section 5 of the FTC Act as

alleged in this complaint;

3. Permanently enjoin Defendants from violating the Pay-Per-Call Rule as alleged in this complaint;

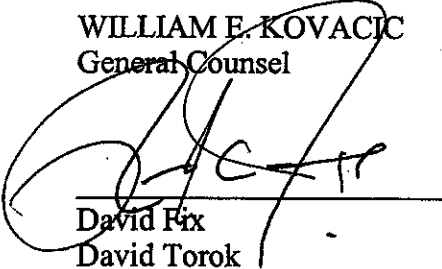
4. Enter judgment against Defendants and in favor of Plaintiff for each violation alleged in this complaint;

5. Award Plaintiff such relief as the Court finds necessary to redress injury to consumers or others resulting from Defendants' violations of the Pay-Per-Call Rule and Section 5 of the FTC Act, including, but not limited to, rescission of contracts, restitution, disgorgement of ill-gotten gains and the refund of monies paid; and

6. Award Plaintiff such additional relief as the Court may deem just and proper.

Dated: *27 MARCH 2002* Respectfully Submitted,

WILLIAM E. KOVACIC
General Counsel



David Fix
David Torok
Renard C. Francois
Attorneys

Federal Trade Commission
600 Pennsylvania Ave. NW, Room H-238
Washington, DC 20580
Telephone: (202) 326-3298 (Fix)
Facsimile: (202) 326-3395
E-Mail: dfix@ftc.gov and rfrancois@ftc.gov