

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

00-7599 CIV - HURLEY

Case No. _____ Civ. _____

FEDERAL TRADE COMMISSION,

Plaintiff,

vs.

AUTOMATED TRANSACTION CORP., a
Delaware corporation; WWW PROVIDER CO., a
company; EDWARD S. LIPTON, individually and
as an officer of AUTOMATED TRANSACTION
CORP. and as owner of WWW PROVIDER CO.;
WORLD TELNET, INC., a Florida corporation;
and, DONALD TETRO, individually and as an
officer of WORLD TELNET, INC.

Defendants.

MAGISTRATE JUDGE
LYNCH

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COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF

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

1. The FTC brings this action under Sections 5(a) and 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(a) and 53(b), to obtain temporary, preliminary, and permanent injunctive relief, restitution, disgorgement, appointment of a receiver and other equitable relief for defendants' unfair and deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), in connection with defendants' unauthorized billing for adult-content Internet and audiotext services.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345, and 15 U.S.C. § 53(b). This action arises under 15 U.S.C. § 45(a)(1).

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

THE PARTIES

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 is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act in order to secure such equitable relief as may be appropriate in each case, and to obtain consumer redress. 15 U.S.C. §§ 53(b) and 56(a)(2).

5. Defendant Automated Transaction Corp. ("ATC") is a Delaware corporation having its office and principal place of business at 3305 Corporate Avenue, Weston, Florida 33331. ATC filed to do business in Florida as a foreign corporation in June 1998 and transacts or has transacted business in the Southern District of Florida. ATC promotes itself as a transactions processor for audiotext and Internet service providers, offering services including credit clearing, billing and collections.

6. Defendant World Telenet, Inc. ("WTN"), is a Florida corporation having its principal place of business at 10011 Pines Boulevard, Suite 101, Fort Lauderdale, Florida 33024.

It also maintains or has maintained offices at 3305 Corporate Avenue, Weston, Florida 33331. WTN transacts or has transacted business in the Southern District of Florida. WTN promotes itself as an Internet provider and audiotext service bureau.

7. Defendant WWW Provider Co. promotes itself as a data processing and preparation company. It has its office and principal place of business at 3305 Corporate Avenue, Weston, Florida 33331. WWW Provider Co. transacts or has transacted business in the Southern District of Florida.

8. Defendant Edward S. Lipton ("Lipton"), is the chairman, president, secretary and registered agent of ATC, and the owner of WWW Provider Co. 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 ATC, WTN and WWW Provider Co., including the acts and practices set forth in this complaint. Lipton resides and transacts or has transacted business in the Southern District of Florida.

9. Defendant Donald Tetro ("Tetro") is the president, sole officer and registered agent of WTN. 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 ATC, WTN and WWW Provider Co., including the acts and practices set forth in this complaint. Tetro resides and transacts or has transacted business in the Southern District of Florida.

DEFINITIONS

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

10. "Defendants" shall mean WWW Provider Co., corporate defendants ATC and WTN, and individual defendants Lipton and Tetro.

11. "Adult-content Internet services" shall refer to web pages, usually sexually explicit in nature, displayed on the World Wide Web ("WWW"). Web pages are housed within a "web site," which is a home or location on the WWW. Web sites usually are comprised of a home page and subordinate pages. Operators of adult-content Internet services typically charge users a fee to access their web pages. The fee usually is assessed as a weekly or monthly web site "membership" fee.

12. "Audiotext service(s)" shall mean audio information or audio entertainment, usually sexually explicit in nature, for which the caller pays a per-call or per-time-interval charge that is greater than, or in addition to, the charge for transmission of the call, and which is accessed through use of international dialing patterns or a 900 telephone number or other prefix or area code designated by the Federal Communications Commission in accordance with 47 U.S.C. § 228(b)(5).

13. "Account statements" shall refer to periodic statements issued by financial institutions to their credit card or debit account customers. The term shall refer to both credit card and debit account statements unless otherwise noted.

COMMERCE

14. At all times material to this complaint, defendants have engaged in the business of offering for sale, selling and/or billing for adult-content Internet and audiotext services, in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS' BUSINESS ACTIVITIES

15. In numerous instances, defendants assess charges against consumers for purported adult-content Internet and audiotext services that the consumers never purchased and never

authorized anyone else to purchase in their name(s). Defendants assess these charges in two ways: by causing charges to be posted to, or monies to be withdrawn from, consumers' credit card or debit accounts, and by sending consumers invoices for the services by direct mail.

Defendants' Credit Card and Debit Account Billing Activities

16. Since at least April 1999, defendants have caused charges to be posted to, or monies to be withdrawn from, consumers' credit card or debit accounts, purportedly for access to adult-content Internet or audiotext services. Defendants' charges for purported Internet services typically range from \$29.95 to \$39.95 per month, although in some cases, defendants charge consumers more than once in a single month. Defendants' charges for purported audiotext services have ranged from under \$20 per month, to hundreds of dollars per month.

17. Since at least April 1999, defendants have used a variety of merchant names, or descriptors, to assess the charges against consumers. Defendants have caused these descriptors to appear on consumers' credit card or debit account statements along with a corresponding telephone number ("customer service number") and the charge that defendants' assess. At various times, defendants have used descriptors including the following to assess charges:

WWW PROVIDER
INTERNET PROVIDER
INTERNET SERVICE
ISC*83 WWW PROVIDER
ISC*75 WWW PROVIDER
ISC*59 SERVICE FEE
IAA*37INTERNETACCESS
IAA*72INTERNET ACCESS
IAA*80INTERNET ACCESS
IAA*64 FONE CALL

18. In numerous instances, consumers never heard of the defendants or the descriptors by which they bill until defendants' charges appeared on their account statements. In numerous instances, consumers have no knowledge of the transactions for which they are being billed.

19. In numerous instances, defendants' charges appear on consumers' account statements for successive months. In many instances, consumers pay the unauthorized charges, or allow their accounts to be debited, for several months before they notice they are being billed for unauthorized charges or question why defendants are billing them.

20. Many of the consumers who defendants charge for Internet services have no Internet access or never purchased adult-content Internet services using their credit card or debit accounts and never authorized anyone else to purchase such services using their accounts. Similarly, many consumers who defendants charge for audiotext services have blocks on their home telephones to prevent calls from being made to 900-number and other audiotext services or they never purchased audiotext services using their account numbers and never authorized anyone else to purchase audiotext services using their account numbers.

Defendants' Direct Mail Billing Activities

21. Since at least August 1998, defendants have sent invoices to consumers by direct mail on ATC letterhead, demanding payment for adult-content Internet or audiotext services that the invoices purport the consumers accessed by telephone. The invoices provide detail as to the date and time of each purported call, the number from which each call purportedly originated, the duration of the call, the charge associated with it and the total amount the consumer purportedly owes. The invoices do not identify the telephone numbers purportedly called, but indicate the telephone charges are for "Entertainment Services" or "Internet Access."

22. Defendants' invoices identify each consumer billed by name and "customer number," the latter of which is the consumer's Social Security number. The invoices also contain printed legends warning that if the consumer fails to pay in full within fifteen days, escalating service charges will begin. The invoices direct that checks be made payable to ATC and include a toll-free number for billing inquiries.

23. In numerous instances, consumers never heard of ATC before receiving the invoice and have no knowledge of the transactions for which the invoices purport to bill.

24. In numerous instances, when consumers have called the billing inquiries number that appears on defendants' invoices to dispute the charges, the billing inquiries operators state that "Entertainment Services" refers to adult "chat" lines and related telephonic services.

25. In numerous instances, defendants' invoices identify as the originating number telephone numbers unknown to the consumers billed. In other instances, the invoices identify the consumers' home telephone numbers, but show the call was made at a time when no one was home. In other instances, defendants' bill consumers for "Entertainment Service" calls made from telephone lines on which consumers have blocks to prevent their telephones from being used to access 900-number and other audiotext services.

26. In numerous instances, when consumers refuse to pay the disputed invoices, defendants send them a "NOTICE OF OUTSTANDING DEBT," followed by a "FINAL NOTICE." Often, these notices are bloated by purported service charges for the delayed payments. The "Final Notice" warns that ATC will report unpaid invoices to credit agencies. In numerous instances, consumers who still refuse to pay disputed invoices subsequently are

dunned by collection agencies seeking the money purportedly due to ATC. In some instances, consumers later discover that their credit reports note that they failed to pay defendants' charges.

27. In numerous instances, consumers never provided their name, address and Social Security number to obtain audiotext or Internet services, and never authorized anyone else to provide their name, address and Social Security number to obtain audiotext or Internet services in the consumer's name, and have no idea how defendants obtained their personal information and used it to assess charges against them.

28. In numerous instances, consumers have paid defendants' invoices for audiotext or Internet services that they never purchased and that they never authorized anyone else to purchase in their name to halt defendants' dunning and avoid damage to their credit status.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

29. As set forth below, defendants, individually and in concert with each other, have violated Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which provides that "unfair or deceptive acts or practices in or affecting commerce are hereby declared unlawful."

COUNT I

30. In numerous instances, in the course of billing, attempting to collect and collecting money from consumers, defendants represent to consumers, expressly or by implication, that the consumers owe money to defendants for goods or services.

31. In truth and in fact, consumers did not purchase or agree to purchase goods or services from defendants or anyone for whom they purport to bill, and therefore do not owe money to defendants.

THIS COURT'S POWER TO GRANT RELIEF

38. 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.

39. This Court, in the exercise of its equitable jurisdiction, may award ancillary 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 Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and pursuant to its own equitable powers:

1. Award plaintiff such preliminary injunctive and ancillary relief, including a temporary restraining order and appointment of a receiver, 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. Award such relief as the Court finds necessary to redress injury to consumers resulting from the defendants' violations of the FTC Act, including but not limited to, restitution, the refund of monies paid, and disgorgement of ill-gotten gains; and

4. 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.

Dated: October 24 2000

Respectfully submitted,

DEBRA A. VALENTINE
General Counsel



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