

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA**

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FEDERAL TRADE COMMISSION,	)	
	)	
Plaintiff,	)	Civil Action No.
	)	
v.	)	
	)	
WEBVIPER, LLC; d/b/a	)	
Yellow Web Services; and	)	
	)	
TIGERHAWK, LLC; d/b/a	)	
Yellow Web Services;	)	
	)	
THOMAS J. COUNTS,	)	
individually, and d/b/a	)	
Yellow Web Services;	)	
	)	
PATRICK C. TAYLOR,	)	
individually, and d/b/a	)	
Yellow Web Services;	)	
	)	
RICHARD M. BOGDANAS,	)	
individually, and d/b/a	)	
Yellow Web Services	)	
	)	
Defendants.	)	

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**COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF**

Plaintiff, the Federal Trade Commission ("Commission"), by its undersigned attorneys, alleges:

1. This is an action under Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), to secure injunctive and other equitable relief, including rescission of contracts, restitution, and disgorgement for Defendants' deceptive acts or practices in violation of

Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), in connection with the marketing and sale of Internet "websites."

### **JURISDICTION AND VENUE**

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

3. Venue in this District is proper under 15 U.S.C. § 53(b) and 28 U.S.C. §§ 1391(b) and (c).

### **PLAINTIFF**

4. Plaintiff Federal Trade Commission is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58. The Commission enforces 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 may initiate federal district court proceedings to enjoin violations of the FTC Act and to secure such equitable relief as may be appropriate in each case, including restitution for injured consumers. 15 U.S.C. § 53(b).

### **DEFENDANTS**

5. Defendant WebViper, LLC ("WebViper") is a limited liability company formed under the laws of Delaware and doing business as Yellow Web Services. WebViper's principal place of business is located at 2401 Fairland Drive, Montgomery Alabama. Defendant WebViper transacts or has transacted business in the Middle District of Alabama.

6. Defendant Thomas J. Counts is one of three partners of WebViper, and the company's vice-president. He resides at 7518 Mossy Oak Drive, Montgomery, Alabama.

7. Defendant Patrick C. Taylor is one of three partners of WebViper, and the company's chief executive officer. Additionally, he is a partner of Tigerhawk, LLC ("Tigerhawk"). He resides at 6221 Chaparral Drive, Montgomery, Alabama.

8. Defendant Tigerhawk is one of three partners of WebViper. Defendant Tigerhawk's principal place of business is located at 2401 Fairland Drive, Montgomery, Alabama.

9. Defendant Richard M. Bagdonas is the chief operating officer of Yellow Web Services. He resides at 1310 Chalk Lane, Cedar Park, Texas.

10. Individually or in concert with others, Defendants Thomas J. Counts, Patrick C. Taylor, and Richard M. Bagdonas have formulated, directed, controlled or participated in the acts and practices of the limited liability defendants, including the various acts and practices set forth herein.

### **COMMERCE**

11. At all times material hereto, Defendants have been engaged in the business of offering for sale and selling, through numerous telemarketers, Internet-related services, including design and hosting of Internet websites and other products, in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

### **DEFENDANTS' BUSINESS ACTIVITIES**

12. Since at least January 1, 1999 and continuing thereafter, Defendants have engaged in a plan, program or campaign to sell website design and hosting services to small businesses. A "website" is a set of electronic documents, usually a home page and subordinate pages, readily viewable on a personal computer by anyone with access to the Internet, standard software, and knowledge of the website's location or address.

13. Defendants, directly or through telemarketers, have targeted various organizations by telephone, primarily very small businesses often operated by a single individual. In numerous instances, Defendants have represented that (a) small businesses can try Defendants' Internet services -- website design and Internet hosting -- on a free trial basis for thirty days with no risk and no obligation to buy; and, (b) small businesses will not be liable for payment for the Internet website services that Defendants provide unless the small business is completely satisfied, and takes affirmative steps to inform Defendants that the small business wants to purchase the service.

14. Defendants begin their sales pitch by asking for the person in charge of the small business's Yellow Pages advertising. Once defendants are speaking with the person in charge of the yellow pages advertising, they explain: 1) that the small business has been selected to receive a free website; 2) that they need to confirm some information; and 3) they need additional information to post on the free website. Only later does the telemarketer reveal that the call is a sales call.

15. In numerous instances, small businesses agree to try Defendants' services based on Defendants' representation that those services are absolutely free for the first 30 days with no hidden charges, and that the small business will not be liable for payment unless they are satisfied with the service.

16. In some instances, small businesses decline the offer, but receive an invoice charging them for services anyway.

17. Numerous small businesses, both those who accept and those who decline Defendants' free trial offer, receive bills charging them a \$59.95 set-up fee usually within thirty (30) days of the sales call.

18. Initial bills, repeat bills, and other correspondence from Defendants inform small businesses that they are liable for a set-up fee, even if the small businesses do not authorize Defendants' website services beyond the thirty day free trial period.

19. The websites that are created by Defendants are very simple displays consisting of one or two screens. What little information is provided frequently contains incorrect information and is rife with spelling errors. Moreover, Defendants do not register the websites with commercial search engines, so that potential small businesses cannot find their website unless they already know the website's Uniform Resource Locator ("URL").

20. In numerous instances, small businesses are unable to reach Defendants to cancel the service after they have seen the website and/or been billed without authorization. Specifically, many small businesses are unable to reach Defendants using the telephone numbers, facsimile numbers, and the e-mail address supplied by the Defendants. In fact, the e-mail address supplied by Defendants cannot be used to receive e-mail at all. In numerous instances small businesses have wasted many hours attempting to cancel Defendants' services.

#### **VIOLATIONS OF SECTION 5 OF THE FTC ACT**

21. As set forth below, Defendants, individually and in concert with others, have violated Section 5(a) of the FTC Act in connection with the offer and sale of their Internet website design and hosting services.

#### **COUNT I**

22. In numerous instances, Defendants have, directly or through telemarketers,

represented, expressly or by implication, that they will not demand payment from small businesses for Defendants' website services, if those small businesses do not agree to pay for such services.

23. In fact, in numerous instances, Defendants demand payment from small businesses for Defendants' website services, even though those small businesses do not agree to pay for such services.

24. Therefore, Defendants' representations, as alleged in Paragraph 22, are false and deceptive, and violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

## **COUNT II**

25. In numerous instances, Defendants have represented, expressly or by implication, that small businesses are legally obligated to pay the charges for Defendants' website services that Defendants have caused to be billed to these small businesses through a direct invoice or other billing statement.

26. In fact, in numerous instances, small businesses are not legally obligated to pay charges for Defendants' website services that Defendants have caused to be billed to small businesses through a direct invoice or other billing statement because neither the small businesses nor their agents have authorized these charges.

27. Therefore, Defendants' representations, as alleged in Paragraph 25, are false and deceptive, and violates Section 5(a) of the FTC Act, 15 U.S.C. §45(a).

## **CONSUMER INJURY**

28. Small businesses in many areas of the United States have suffered 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 practices. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers and harm the public interest.

**THIS COURT'S POWER TO GRANT RELIEF**

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

**PRAYER FOR RELIEF**

Wherefore, Plaintiff requests that this Court:

1. Award plaintiff such preliminary injunctive and 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, as alleged herein;

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, rescission of contracts, the refund of monies paid, and the disgorgement of ill-gotten monies; and

4. Award plaintiff the costs of bringing this action, as well as such other and additional equitable relief as the Court may determine to be just and proper.

Dated: \_\_\_\_\_ 1999

Respectfully submitted,

DEBRA A. VALENTINE  
General Counsel

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Nancy Pineles (DC 450448)  
James A. Kohm (DC 426342)  
Attorneys for Plaintiff  
Federal Trade Commission  
600 Pennsylvania Ave. NW  
Washington, DC 20580  
(202) 326-2484  
(202) 326-3282