

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS OCT 21 1999 TC

CLERK OF COURT

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

U.S. REPUBLIC COMMUNICATIONS, INC.,
a Texas Corporation, and

T. GARY REMY,
individually and as an officer of U.S. Republic
Communications, Inc.,
Defendants.

Civil Action No.

H - 99 - 3657

COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF

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

1. This is an action under Sections 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 U.S. Republic Communications, Inc. ("USRC") is a Texas corporation with its offices and principal places of business located at 4800 Sugar Grove Boulevard, Suite 500, Stafford, TX 77477. Defendant USRC transacts or has transacted business in the Southern District of Texas.

6. Defendant T. Gary Remy is an owner and officer of USRC. He resides and transacts or has transacted business in the Southern District of Texas.

7. Individually or in concert with others, Defendant T. Gary Remy has formulated, directed, controlled or participated in the acts and practices of the corporate Defendant, including the various acts and practices set forth herein.

COMMERCE

8. 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

9. Since at least February 1998, 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 computer by anyone with access to the Internet, standard software, and knowledge of the website's location or address.

10. Defendants, directly or through telemarketers, have contacted various organizations by telephone, primarily targeting small businesses. In numerous instances, Defendants have represented that: (a) small businesses can try USRC's website design and hosting services on a free trial basis for thirty days with no risk and no obligation to buy; (b) that Defendants will mail or fax a printed copy of the website, with its Internet address, to the small business in three to five days; and (c) USRC will not charge small businesses for the website services unless they are completely satisfied and take affirmative steps to inform Defendants that they want to purchase the service.

11. In numerous instances, Defendants, directly or through telemarketers, have contacted employees of small businesses who have stated that they lacked the authority to authorize purchases on behalf of their employers. In numerous instances, Defendants, directly or

through their telemarketers, have represented to these employees that they are only authorizing a free trial period, and that there will be no charge unless the small business later contacts Defendants to order the service. In some instances, Defendants have told these employees that Defendants are only seeking authorization to send an information package to the business, and that they need some basic information about the business to do so.

12. The Defendants' Internet website services, however, are not free. Despite the representations set forth in paragraphs 14 and 15 above, Defendants typically bill small businesses approximately twenty-five dollars on their telephone bills on a recurring, monthly basis, without any authorization from the small businesses, and typically without sending sample websites or any additional information to the small businesses about the Defendants' Internet website services or the charges that will be assessed. In some instances, Defendants send or fax a printed copy of a sample website to the small businesses. Many of these small businesses affirmatively reject Defendants' service or do not respond to Defendants, yet are still charged for Internet website services by Defendants. Small businesses frequently do not notice Defendants' charges amid their other business telephone expenses and inadvertently pay the Defendants' charges for months.

13. Defendants, directly or through telemarketers, represent that their website services include registering the small businesses' websites with major Internet search engines, such as Yahoo, Lycos, Excite, and Alta Vista, so that potential customers can find these websites. Defendants, however, can't guarantee that any website will be picked-up by any search engine, let alone the major search engines that they name. In fact, consumers can rarely access the defendants' websites through the major search engines named by defendants.

14. In numerous instances, Defendants use a third-party authorization service to make audio tapes of small businesses purporting to show that the small businesses have agreed to purchase Defendants' services upon expiration of the free trial period. These authorization tapes often inadequately disclose that small businesses' phones will be automatically billed, and in numerous instances this disclosure fails to correct Defendants' explicit or implicit representations during the telemarketing sales pitch that the service will be free unless the small businesses take additional, affirmative steps to order the service and authorize billing.

15. In numerous instances, where small businesses contend that they have not ordered Defendants' services, Defendants represent that small businesses have authorized the service and are legally obligated to pay for it. In some instances, Defendants also represent that they will cancel the service prospectively, but that they cannot credit any of the current or past charges. In other instances, Defendants continue to charge small businesses for an additional month or months after small businesses request cancellation.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

16. 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

17. In numerous instances, Defendants have, directly or through telemarketers, represented, expressly or by implication, that Defendants will not charge small businesses unless small businesses take affirmative steps to authorize charges during a thirty-day trial period.

18. In fact, in numerous instances Defendants charge small businesses, even though the small businesses do not take affirmative steps to authorize charges during the thirty-day trial period.

19. Therefore, Defendants' representations, as alleged in Paragraph 17, are false and deceptive, and violate Section 5(a) of the FTC Act, 15 U.S.C. §45(a).

COUNT II

20. In numerous instances, Defendants have, directly or through telemarketers, represented, expressly or by implication, that Defendants will not assess small businesses a recurring monthly charge for website services until thirty days after Defendants have provided the small businesses with a website sample and information that will enable the small businesses to access and review the website designed and hosted by Defendants.

21. In fact, in numerous instances, Defendants assess small businesses a recurring monthly charge for website services less than thirty days after Defendants have provided small businesses with a website sample and information that will enable the small businesses to access and review the website designed and hosted by Defendants. In numerous other instances, Defendants assess a recurring monthly charge without providing small businesses any website sample or additional information at all.

22. Therefore, Defendants' representations, as alleged in Paragraph 20, are false and deceptive, and violate Section 5(a) of the FTC Act, 15 U.S.C. §45(a).

COUNT III

23. In numerous instances, Defendants have, directly or through telemarketers, represented, expressly or by implication, that they will provide small businesses with websites that are easily accessible to the public through major Internet search engines.

24. In fact, in numerous instances Defendants provide small businesses with websites that are not easily accessible to the public through major Internet search engines.

25. Therefore, Defendants' representations, as alleged in Paragraph 23, are false and deceptive, and violate Section 5(a) of the FTC Act, 15 U.S.C. §45(a).

COUNT IV

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

27. 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 these small businesses through a phone bill or other billing statement, because neither the small businesses nor the small businesses' agents have authorized these charges.

28. Therefore, Defendants' representations, as alleged in Paragraph 26, are false and deceptive, and violate Section 5(a) of the FTC Act, 15 U.S.C. §45(a).

CONSUMER INJURY

29. 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 small businesses and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

30. 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

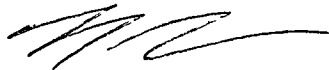
Wherefore, Plaintiff requests that this Court:

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 small businesses 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: October 19, 1999

Respectfully submitted,

DEBRA A. VALENTINE
General Counsel



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