

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

WEBSOURCE MEDIA, L.L.C., *et al.*,

Defendants.

Civ. No.: H-06-1980

**STIPULATED FINAL JUDGMENT AND ORDER FOR PERMANENT INJUNCTION
AS TO WEBSOURCE MEDIA, L.L.C., WEBSOURCE MEDIA, L.P.,
AND BIZSITEPRO, L.L.C., AND EVERSITES, L.L.C.**

Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), filed its Amended Complaint for a permanent injunction and other equitable relief in this matter pursuant to Sections 5(a) and 13(b) of the Federal Trade Commission Act, 15 U.S.C. §§ 45(a) and 53(b) charging the Defendants WebSource Media, L.L.C., WebSource Media L.P., BizSitePro, L.L.C., Eversites, L.L.C., Telsource Solutions, Inc., Telsource International, Inc., Marc R. Smith, Kathleen A. Smalley, Keith D. Hendrick, Steven L. Kennedy, John O. Ring, and James E. McCubbin, Jr. (“Named Defendants”), with unfair and deceptive acts and practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45. The Named Defendants have all denied the allegations in the Amended Complaint.

Plaintiff Commission, by and through its attorneys, and Defendants WebSource Media, L.L.C., WebSource Media L.P., BizSitePro, L.L.C., and Eversites, L.L.C. (“Websource

Defendants”), have agreed to entry of this Stipulated Final Judgment and Order for Permanent Injunction (“Final Judgment and Order”) by this Court in order to resolve all claims against the Webservice Defendants in this action. The Commission and the WebSource Defendants have consented to entry of this Final Judgment and Order without trial or adjudication of any issue of law or fact herein and without the WebSource Defendants admitting liability for any of the violations alleged in the Amended Complaint.

Being fully advised in the premises and acting upon the joint motion of the parties to enter this Final Judgment and Order,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

1. This Court has jurisdiction over the subject matter of this case and personal jurisdiction over the WebSource Defendants;
2. The Complaint states a claim upon which relief may be granted against the WebSource Defendants under Sections 5 and 13(b) of the FTC Act, 15 U.S.C. §§ 45 and 53(b);
3. Venue in this district is proper under 28 U.S.C. § 1391(b) and 15 U.S.C. § 53(b);
4. The activities of the WebSource Defendants are “in or affecting commerce” as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44;
5. Entry of this Final Judgment and Order is in the public interest;
6. The WebSource Defendants have read and fully understand the Complaint against them and the provisions of this Final Judgment and Order, and they freely enter into this Final Judgment and Order; and
7. The WebSource Defendants have waived all claims under the Equal Access to

Justice Act, 28 U.S.C. § 2412, and all rights to seek judicial review or otherwise challenge the validity of this Final Judgment and Order. The parties shall each bear their own costs and attorney's fees incurred in this action. Nothing herein shall prohibit any Named Defendant from pursuing any claims it may have against any other Named Defendant for any other legal and/or equitable relief, including but not limited to attorneys' fees, indemnity, and contribution.

DEFINITIONS

For the purpose of this Final Judgment and Order, the following definitions shall apply:

A. **"Assets"** means any legal or equitable interest in, right to, or claim to, any real and personal property, including but not limited to "goods," "instruments," "equipment," "fixtures," "general intangibles," "inventory," "checks," "notes" (as these terms are defined in the Uniform Commercial Code), and all chattel, leaseholds, contracts, mail or other deliveries, shares of stock, lists of consumer names, accounts, credits, premises, receivables, funds, and cash, wherever located.

B. **"Named Defendants"** means WebSource Media, L.L.C., WebSource Media L.P., BizSitePro, L.L.C., Eversites, L.L.C., Telsource Solutions, Inc., Telsource International, Inc., Marc R. Smith, Kathleen A. Smalley, Keith D. Hendrick, Steven L. Kennedy, John O. Ring, and James E. McCubbin, Jr.

C. **"WebSource Defendants"** means WebSource Media, L.L.C., WebSource Media L.P., BizSitePro, L.L.C., and Eversites, L.L.C.

D. **"Assisting others"** means knowingly providing any of the following goods or services to another entity: (1) performing customer service functions, including, but not limited

to, receiving or responding to consumer complaints; (2) formulating or providing, or arranging for the formulation or provision of, any telephone sales script or any other marketing material; (3) providing names of, or assisting in the generation of, potential customers; or (4) performing marketing or billing services of any kind.

E. **“Document”** is synonymous in meaning and equal in scope to the usage of the term “documents or electronically stored information” in Federal Rule of Civil Procedure 34(a), and includes writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations stored in any medium from which the information can be obtained and translated, if necessary, through detection devices into reasonably usable form. A draft or non-identical copy is a separate document within the meaning of the term.

F. **“Telemarketing”** means a plan, program, or campaign which is conducted to induce the purchase of goods or services or a charitable contribution, by use of one or more telephones and which involves more than one interstate telephone call. The term does not include the solicitation of sales through the mailing of a catalog which: contains a written description or illustration of the goods or services offered for sale; includes the business address of the seller; includes multiple pages of written material or illustrations; and has been issued not less frequently than once a year, when the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the catalog and during those calls takes orders only without further solicitation. For purposes of the previous sentence, the term “further solicitation” does not include providing the customer with information about, or attempting to sell, any other item included in the same catalog which

prompted the customer's call or in a substantially similar catalog.

G. **"Telemarketer"** means any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer or donor.

H. **"Person"** means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.

I. **"Internet Services"** means any product or service that assists persons to access, use, search, browse, advertise on, communicate through, or do business on the Internet, including but not limited to: design, hosting and maintenance of web pages and websites, providing Internet access or e-mail accounts, and establishing domain names and virtual domain names.

J. **"Authorized Purchaser"** means any person who has the authority to bind the person who would be responsible for payment of any charges associated with the telemarketing transaction.

K. **"Material terms of the offer"** means all terms material to an authorized purchaser's decision to purchase, including, but not limited to:

1. the fact that the authorized purchaser will be billed unless the authorized purchaser takes affirmative action to cancel;
2. the account which will be billed if the authorized purchaser does not cancel;
3. the length of any trial period before a charge is assessed;
4. the amount of each charge and the frequency of each charge if the authorized purchaser does not cancel within the trial period;

5. a toll-free telephone number which may be utilized by the authorized purchaser to cancel prior to any billing; and
6. the terms and conditions of any refund policies.

L. **“Express written authorization”** means written authorization signed by the authorized purchaser which evidences clearly both the authorized purchaser’s receipt of all of the material terms of the offer of goods or services and the authorized purchaser’s subsequent authorization of payment from a specific account for the goods or services which are the subject of the telemarketing transaction. For purposes of this Final Judgment and Order, the term “signed” shall include an electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law.

M. **“Express oral authorization”** means oral authorization which is audio-recorded by an independent third-party and made available upon request to the authorized purchaser, the authorized purchaser’s bank, credit card company, or telephone company, and which evidences clearly both the authorized purchaser’s authorization of payment from a particular account for the goods or services which are the subject of the telemarketing transaction and the authorized purchaser’s receipt of all of the material terms of the offer of goods or services prior to the authorization. An audio recording of the entire telemarketing transaction must be made and maintained, and the telemarketer may not participate in that portion of the telemarketing call which is recorded for the purpose of documenting the authorized purchaser’s express oral authorization to be billed for goods and services.

N. **“Express informed consent”** means either express written authorization or

express oral authorization.

O. **“Verification recording”** means an audio-recording of some or all of a telemarketing transaction which is created for the purpose of documenting an authorized purchasers’s express oral authorization to purchase goods or services and to be billed for those goods or services.

P. **“Existing Verizon customers”** means any and all of the WebSource Defendants’ customers, existing as of June 12, 2006, who were being billed through Verizon-related local exchange carriers at that time, and who have not been billed since June of 2006.

Q. **“Active concert and participation”** means “active concert and participation” as that term is used in and construed under Rule 65(d), Fed. R. Civ. P.

ORDER

I. PROHIBITED MISREPRESENTATIONS

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that in connection with the telemarketing, advertising, promotion, offering for sale, or sale of any Internet services, the WebSource Defendants, as well as their successors and assigns, and each of their officers, agents, servants, employees, and attorneys, and all other persons or entities in active concert or participation with them who receive actual notice of this Final Judgment and Order by personal service or otherwise, whether acting directly or through any business entity, corporation, subsidiary, affiliate, division, or other device, are hereby permanently restrained and enjoined from misrepresenting, expressly or by implication, any material fact, including, but not limited to, misrepresenting:

- A. That a free trial service will be cancelled automatically if the authorized purchaser does not affirmatively approve the continuation of the service;
- B. That a verification recording is being made for any purpose other than to document the authorized purchaser's express informed consent; and
- C. That an authorized purchaser is obligated to pay any charge for which the authorized purchaser has not given express informed consent.

II. PROHIBITED BILLING PRACTICES

IT IS FURTHER ORDERED that in connection with the telemarketing, advertising, promotion, offering for sale, or sale of any Internet services, the WebSource Defendants, as well as their successors and assigns, and each of their officers, agents, servants, employees, and attorneys, and all other persons or entities in active concert or participation with them who receive actual notice of this Final Judgment and Order by personal service or otherwise, whether acting directly or through any business entity, corporation, subsidiary, affiliate, division, or other device, are hereby permanently restrained and enjoined from, directly or indirectly, billing or receiving money, or assisting others in billing or receiving money, from any authorized purchaser without the authorized purchaser's express informed consent.

III. INJUNCTION AGAINST PROVIDING CUSTOMER LISTS

IT IS FURTHER ORDERED that the WebSource Defendants, as well as their successors and assigns, and each of their officers, agents, servants, employees, and attorneys, and all other persons or entities in active concert or participation with them who receive actual notice of this Final Judgment and Order by personal service or otherwise, whether acting directly or

through any business entity, corporation, subsidiary, affiliate, division, or other device, are hereby permanently restrained and enjoined from selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number, social security number, or other identifying information of any person who purchased services from the WebSource Defendants at any time prior to the date this Final Judgment and Order is entered. *Provided*, however, that nothing in this Paragraph III shall prevent the WebSource Defendants from selling all or substantially all of their assets, including then existing customer accounts and then current customer information, to a purchaser who subsequently assumes the obligation to provide Internet services to those customer accounts and who assumes the obligations associated with those customer accounts, including the obligation to comply with all of the applicable provisions of this Final Judgment and Order. *Provided*, further, that the Websource Defendants may disclose such identifying information to a law enforcement agency or as required by any law, regulation, or court order.

IV. SPECIAL PROVISIONS RELATING TO EXISTING VERIZON CUSTOMERS

IT IS FURTHER ORDERED that:

A. Before resuming billing of existing Verizon customers, the WebSource Defendants, as well as their successors and assigns, and each of their officers, agents, servants, employees, and attorneys, and all other persons or entities in active concert or participation with them who receive actual notice of this Final Judgment and Order by personal service or otherwise, whether acting directly or through any business entity, corporation, subsidiary, affiliate, division, or other device, shall provide each and every existing Verizon customer with

notice, sent via United States mail, in the form shown in Attachment A of this Final Judgment and Order.

B. The WebSource Defendants, as well as their successors and assigns, and each of their officers, agents, servants, employees, and attorneys, and all other persons or entities in active concert or participation with them who receive actual notice of this Final Judgment and Order by personal service or otherwise, whether acting directly or through any business entity, corporation, subsidiary, affiliate, division, or other device, shall not resume billing any existing Verizon customer who responds to the notice described in Paragraph IV.A. by requesting not to be billed.

C. With respect to any existing Verizon customer who complains about unauthorized charges billed to and collected from that customer by or on behalf of the WebSource Defendants at any time after entry of this Final Judgment and Order, the WebSource Defendants, as well as their successors and assigns, and each of their officers, agents, servants, employees, and attorneys, and all other persons or entities in active concert or participation with them who receive actual notice of this Final Judgment and Order by personal service or otherwise, whether acting directly or through any business entity, corporation, subsidiary, affiliate, division, or other device, shall refund to that customer one hundred per cent (100%) of the charges billed and collected from that customer at any time after entry of this Final Judgment and Order.

V. MONETARY JUDGMENT

IT IS FURTHER ORDERED that:

A. Judgment in the amount of TWENTY-FOUR MILLION, SEVEN HUNDRED

THOUSAND DOLLARS (\$24,700,000) is entered jointly and severally against the WebSource Defendants; provided, however, that upon the fulfillment of the payment obligations set forth in Paragraphs V.B. and V.C. of this Final Judgment and Order by the WebSource Defendants, this judgment shall be suspended until further order of the Court, and provided further that this judgment shall be subject to the conditions set forth in Paragraph VI of this Final Judgment and Order.

B. The WebSource Defendants shall be liable for payment of equitable monetary relief, including, but not limited to, consumer redress and/or disgorgement, and for paying any attendant expenses of administration of any redress fund, in the amount of NINE HUNDRED AND TWENTY-NINE THOUSAND DOLLARS (\$929,000).

C. Within ten (10) days of entry of this Final Judgment and Order, the WebSource Defendants shall pay the sum of ONE HUNDRED AND FORTY-FIVE THOUSAND DOLLARS (\$145,000) to the Commission in the form of a wire transfer to the Commission. Within ten (10) days of entry of this Final Judgment and Order, the Court shall release to the Commission, in the form of a wire transfer or certified or cashier's check made payable to the Commission, a payment of ONE HUNDRED AND FIFTY-FIVE THOUSAND DOLLARS (\$155,000), which represents the remaining amount of the funds deposited into the registry of the Court by or on behalf of the WebSource Defendants in March and April of 2007. The WebSource Defendants shall pay the remaining sum of SIX HUNDRED AND TWENTY-NINE THOUSAND DOLLARS (\$629,000) in two (2) quarterly installments, until the Commission has been paid the total sum of NINE HUNDRED AND TWENTY-NINE THOUSAND DOLLARS

(\$929,000) by or on behalf of the WebSource Defendants. Payment shall be made as follows: THREE HUNDRED THOUSAND DOLLARS (\$300,000) paid on or before the 90th day after entry of this Final Judgment and Order; and THREE HUNDRED AND TWENTY-NINE THOUSAND DOLLARS (\$329,000) paid on or before the 180th day after entry of this Final Judgment and Order.

D. Time is of the essence for the payments specified above. In the event that the WebSource Defendants do not fulfill, or only partially fulfill, their payment obligations set forth in this Paragraph V, the Websource Defendants shall be immediately liable for payment of TWENTY-FOUR MILLION, SEVEN HUNDRED THOUSAND DOLLARS (\$24,700,000), which is the entire amount of the judgment, plus interest, less any payments already made. Notwithstanding any other provision of this Final Judgment and Order, the WebSource Defendants agree that, if they fail to meet the payment obligations set forth in this Paragraph V, the facts as alleged in the Amended Complaint filed in this matter shall be taken as true in any subsequent litigation filed by the Commission to enforce its rights pursuant to this Final Judgment and Order, including, but not limited to, a nondischargeability complaint in any subsequent bankruptcy proceeding.

E. All funds paid pursuant to this Final Judgment and Order shall be deposited into a fund administered by the Commission or its agent to be used for equitable relief, including, but not limited to, consumer redress and any attendant expenses for the administration of any redress fund. In the event that direct redress to consumers is wholly or partially impracticable or funds remain after redress is completed, the Commission may apply any remaining funds for such other

