

**IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA**

**OFFICE OF THE ATTORNEY GENERAL,  
DEPARTMENT OF LEGAL AFFAIRS,  
STATE OF FLORIDA,**

**Plaintiff**

**v.**

**DIRECTORY BILLING, LLC,  
a Florida Limited Liability company  
d/b/a DIRECTORY BILLING  
and d/b/a USDIRECTORY.COM  
Defendant.**

**Case No. 500-2007-CA-  
024362 -XXXXMB**

**CONSENT JUDGMENT**

Pursuant to the attached Consent to Judgment filed by the parties in this matter, the Court makes the following findings and enters the following Consent Judgment:

**I. JURISDICTION AND SCOPE**

A. Jurisdiction and Venue. The Court has jurisdiction over the parties to this action and finds that venue is proper.

B. Scope of Consent Judgment. The injunctive provisions of this Consent Judgment are entered pursuant to Florida's Deceptive and Unfair Trade Practices Act, Chapter, 501, Part II, Florida Statutes, (2007), relating to the use of activation checks in connection with the sale of merchandise and are applicable to **DIRECTORY BILLING, LLC**, a Florida limited liability company **d/b/a DIRECTORY BILLING** and **d/b/a USDIRECTORY.COM**, and its officers, members directors, employees, agents, servants, representatives, successors and assigns and all persons, corporations, partnerships, and other entities acting in concert or participating with them who have actual or constructive knowledge of this Consent Judgment.

## **II. DEFINITIONS**

The following definitions shall be used in interpreting the terms of this Consent Judgment.

**Activation Checks** means a negotiable instrument in the form of a check that, by its deposit, is intended by the sender or payor to evidence the acceptance by the recipient or payee of an offer to sell goods or services or the acceptance of an obligation to pay for any goods or services, or the establishment or activation of a relationship, which is reasonably expected to create a future obligation on the recipient or payee to pay for goods or services.

**Bill or Billing** means the submission of any billing information to a third party billing processor or aggregator for the purpose of the ultimate submissions of that billing information to a customer's bank account, local exchange company (telephone company), credit card, or through any other automated billing channel intended to elicit payment by the customer, but, for purposes of this Consent Judgment, does not include a written invoice delivered through the United States mail.

**Activation Check Customer** means any individual, business, church, institution, governmental agency or other organization or entity which was initially solicited by the Defendant, through an Activation Check and which activated an account through the deposit of an Activation Check and thereafter was subjected to billing by the Defendant, through an automated billing channel including a Local Exchange Company (LEC) or telephone bill, an automatic bank draft or ACH draft posted against the Activation Check Customer's bank account, or a recurring charge posted against the credit card and that made at least one payment to the Defendant.

**Current Activation Check Customer** means any Activation Check Customer which made a payment to the Defendant, directly or through a third party, within thirty (30) days of the Effective Date of this Judgment, through or in response to any automated billing channel. Current Activation Check Customer does not include any customer that made a payment ~~during~~ by mailing a check to the Defendant in response to a written invoice mailed to it by the Defendant and/or a any customer that logged into their account with the Defendant.

**Defendant** means **DIRECTORY BILLING, LLC**, a Florida Limited Liability Company d/b/a **DIRECTORY BILLING** and d/b/a **USDIRECTORY.COM**.

**Effective Date** means March 1, 2008.

**Merchandise** shall include any objects, wares, goods, commodities, intangibles, real estate, services or anything offered, directly or indirectly, to the public for sale.

**Represent** means to state, or to imply through statements, questions, conduct, graphics, symbols, lettering, formats, devices, language, documents, messages, or through any other

manner or means by which meaning might be conveyed. For purposes of this Consent Judgment, this definition applies to other forms of the word "Represent," including without limitation "Representation." In determining the express or implied meaning of a Representation that appears from the outside of a mailing envelope, only matter visible without opening the envelope shall be considered.

The **Settling States** are: Alaska, Arizona, Arkansas, California, Connecticut, Delaware, Florida, Idaho, Illinois, Louisiana, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Carolina, North Dakota, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, and West Virginia.

The **State** means the Office of the Attorney General.

### **III. INJUNCTIVE TERMS**

#### **A. Promotional Practices**

Termination of Use of Activation Checks. In connection with the advertisement, offer for sale or sale of goods or services, Defendant shall not, directly or indirectly, send to individuals, businesses, churches, institutions, governmental agencies or other organizations or entities any solicitation that contains an Activation Check.

#### **B. Notification of Current Activation Check Customers**

1. Notice to Current Activation Check Customers. As of the Effective Date, Defendant shall not bill any Current Activation Check Customer for merchandise initially sold, in part or in full, through the use of an Activation Check unless and until Defendant mails to such customer the letter attached hereto and incorporated herein as Exhibit "A" in compliance with the following terms:

A) Notice Mailing Requirements. Defendant shall mail to each Current Activation Check Customer the letter and envelope attached hereto as Exhibit "A" by first class mail to the last known address of each Current Activation Check Customer. Also enclosed with the Exhibit A mailing shall be a return envelope addressed to Directory Billing, LLC. Such mailing shall occur within twenty (20) days of the Effective Date of this Consent Judgment. The letter and envelope attached hereto as Exhibit "A" shall have no other purpose and shall not contain any documents or other information not depicted by or expressly allowed by this sub-paragraph.

B) Customer Service. Defendant shall ensure that the telephone number reflected on Exhibit "A" as a "customer service" number is the same "customer service" number used in other contexts by Defendant, so as to ensure that recipients of Exhibit "A" might also locate that "customer service" number through Directory Billing, LLC, and other correspondence or communications between them and the Defendant. The

"customer service" number shall be manned during regular business hours so that a recipient calling in response to Exhibit "A" may speak to a representative of Defendant, following no more than one automated menu option.

C) Returned Mail and Non-Mailable Addresses. Defendant shall inform the State of any mailing made of Exhibit "A" which is returned for either an incorrect or non-mailable address or due to a refusal by the apparent addressee to receive the mailing. Defendant shall not commence billing for the affected account unless and until it obtains reliable third party confirmation that the address is currently on file with the United States Postal Service as the valid and current address for the Current Activation Check Customer. Evidence of that confirmation shall be retained under the terms of this Judgment and made available to the State upon request. Defendant will mail (or re-mail) Exhibit "A" to any confirmed or corrected address, making such modifications as necessary to allow recipients or re-mailed recipients a sixty (60) day period to make any response.

2. Reporting. Defendant shall retain all written responses to Exhibit "A" for a period of at least three years from the Effective Date. Defendant shall identify, within twenty (20) business days of receiving a request by the State, the name, address, telephone number, and account number of any customer which responded to Exhibit "A," along with the amount paid to that customer by Defendant, and the date that payment was made. Defendant shall also provide, within twenty (20) business days of receiving a request by the State, the name, address and telephone number associated with any customer account for which Exhibit "A" was returned to Defendant under paragraph 1(C) or any address confirmation obtained pursuant to paragraph 1(C) above.

3. Handling of Redress Offered to Current Activation Check Customers. Defendant shall accept all qualified requests that were postmarked within sixty (60) days following the last date on which Exhibit "A" was mailed by first class mail.

A) Qualified Requests. Defendant shall accept as "qualified" all requests for refunds which substantially comply with the requirements set forth in Exhibit "A." "Substantially complying" requests would include those requests which may be completed on copies of Exhibit "A" or replicated forms which otherwise reflect the content of the "refund request" portion of Exhibit "A," including the affirmation contained thereon. Pursuant to Exhibit "A" Defendant shall provide a refund in an amount equivalent to the qualified requestor's last two payments, refund any payments made to the Defendant since the date Exhibit "A" was mailed by the Defendant to the qualified requestor and, cancel out any debt that might still be owed by the qualified requestor.

B) Payment to Qualified Requests for Refund. Defendant shall remain responsible for ensuring that payment of any requested refund shall be made under the terms of this Section and shall take all reasonable efforts to complete that payment. If,

after reasonable efforts, a payment has not been made to a qualified Current Activation Check Customer that has requested said refund, Defendant shall provide a written report to the State identifying such recipients and the efforts made to complete payment. Within ninety days of receiving such report, the State may direct payment by Defendant of those claimed amounts to any designated State agency responsible for holding unclaimed funds for the benefit of that qualified Current Activation Check Customer.

4. Non-Exclusivity of Redress. Nothing in this Consent Judgment shall be construed as limiting the ability of Defendant to offer additional refunds, credits, or other redress which exceeds the requirements of this judgment. Defendant shall continue to honor any private agreements reached with individual customers in resolving any disputes.

5. Cancellation of Account and Limitation on Collection Efforts. If a Current Activation Check Customer requests cancellation in response to the notice attached hereto as Exhibit A, or if any prior Activation Check Customer had requested cancellation prior to the entry of this Consent Judgment, then Defendant shall immediately cancel the customer's account with the Defendant and permanently cease billing the customer for services under the account. Additionally, the Defendant shall not, directly or indirectly, pursue collection of any unpaid or past-due amounts owed on such person's account, or represent that such collection may occur.

6. Reporting. Within sixty (60) days following the conclusion of the 60-day notification period described above, Defendant shall provide the State a record in electronic form (e.g., Microsoft Excel or other compatible database) itemizing all customers which responded to Exhibit "A," and the following details: their name, address, telephone number, account number, the date their response was postmarked, and the amount they were paid by Defendant, and the date that payment was mailed.

#### **IV. MONETARY PROVISIONS**

**A. Payment.** The Settling States shall recover and Defendant shall pay the amount of Four Hundred Thousand Dollars (\$400,000.00). Such monies shall be paid to the Attorney General of the State of Florida, "Department of Legal Affairs Escrow Trust Fund," on behalf of the Settling States by Defendant upon the Defendant signing this Consent Judgment.

**B. Distribution.** As soon as practicable following receipt of the above funds, the Attorney General of the State of Florida shall cause such funds to be distributed among the Settling States pursuant to an agreement between and among the Settling States, to which Defendant is not a party, for the purposes of implementing restitution programs and being applied to their consumer protection efforts, reimbursement of their litigation costs, attorneys fees, investigative costs, and applied to any other lawful use by the Settling States. Notwithstanding the immediately preceding sentence, subject to their respective state laws and policies, the States may use those funds not applied to their restitution programs for any purpose provided by state law, including for placement in or application to, a consumer education,



litigation, or local consumer aid fund or revolving fund, or for other uses to defray the costs of the litigations and investigations leading to this Judgment, as permitted by the laws of the State. The State of Florida shall deposit its share of such funds as follows: \$67,708.25 into the Florida Department of Legal Affairs Revolving Trust Fund, as partial reimbursement of the attorney's fees incurred in investigation and filing suit, pursuant to Section 16.53, Florida Statutes, and \$27,509.53 as consumer restitution funds, to be deposited into the Florida Department of Legal Affairs Escrow Trust Fund, consistent with Florida Law. Any of Florida's restitution funds not claimed within 90 days from the effective date will revert to the Department of Legal Affairs Revolving Trust Fund.

## **V. RECORDS AND COMPLIANCE**

### **A. Provision of Records**

1. Current Activation Check Customer Records Within twenty (20) business days of the Effective Date of this Consent Judgment, the Defendant shall provide to the State a record in electronic form (e.g., Microsoft Excel or other compatible database) itemizing all Current Activation Check Customers (those customers to whom Exhibit "A" is to be mailed), identified by customer number. Notwithstanding the above twenty (20) business day deadline, the foregoing record shall be provided by the date on which Exhibit "A" is mailed.

2. Assistance with Consumer Inquiries For a period of one (1) year following the effective date of this Consent Judgment, if the State provides the Defendant with the name of an Activation Check Customer, the Defendant shall provide, within five (5) business days of receipt of such a request, that customer's full name, address, telephone number, current method of billing (if any), account number, the dates during which the customer's account was open, the total amount paid by the customer to Defendant since January 1, 2004, and any amount that was refunded, reimbursed or credited against those amounts paid prior to the Effective Date of this Consent Judgment (i.e., any set-off asserted by Defendant). Defendant will accept such requests from a Settling State by e-mail, telefax or telephone, in addition to mail.

3. Former Activation Check Customer Records Defendant shall provide, within twenty (20) business days of receipt of any request from one of the Settling States, a list of all Activation Check Customers who are no longer customers of the Defendant. The list shall state the former customer's full name, address, telephone number, account number, the dates during which the customer's account was open, the total amount paid by the customer to Defendant since January 1, 2004, and any amount that was refunded, reimbursed or credited against those amounts paid prior to the Effective Date of this Consent Judgment (i.e., any set-off asserted by Defendant). Defendant will accept such requests from a Settling State by e-mail, telefax or telephone, in addition to mail.

## **B. Availability of Records**

In addition to all foregoing obligations to provide information or records to the States, the Defendant shall maintain and make available to the State, upon its written request, all books, records and other documents which reflect the implementation of the terms of this Consent Judgment and compliance with its terms; all books, records and other documents which reflect the use of any Activation Check or any account created following the use of an Activation Check for any Current Activation Check Customer who requests cancellation in response to the notice attached hereto as Exhibit A; and all books, records and other documents which reflect any prior Activation Check Customer that had requested cancellation prior to the entry of this Consent Judgment. Any such records requested by the State shall be made available for inspection within twenty (20) business days. The Defendant shall honor any request from the State to make such records available without further legal process.

## **VI. GENERAL AND ADMINISTRATIVE PROVISIONS**

1. Modification. Jurisdiction is retained for the purpose of enabling any party to this Consent Judgment to apply to the Court at any time for such further orders and directions as might be necessary or appropriate for the modification, construction, or carrying out of the injunctive provisions of this Consent Judgment, or for the enforcement of and the punishment of violations of any provisions hereof. The parties by stipulation may agree to a modification of this Consent Judgment, which agreement shall be presented to this Court for consideration, provided that the parties may jointly agree to a modification only by a written instrument signed by or on behalf of both the State and Defendant.

Any party to this Consent Judgment may petition the Court for modification on thirty (30) days' notice to all other parties to this Consent Judgment. If Defendant wishes to seek a stipulation for a modification from the State, it shall send a written request for agreement to such modification to the Attorney General of the State at least thirty (30) days prior to filing a motion with the Court for such modification.

2. Modification for Conflict of Law. If, after the Effective Date of this Consent Judgment, the State, its Attorney General, or any agency of the State charged with the administration of its consumer protection statutes, enacts or promulgates legislation, rules, or regulations with respect to the matters governed by this Consent Judgment that conflict with any provision of this Consent Judgment, including specifically allowing, under certain conditions, that which is prohibited under this Consent Judgment, or if the applicable law of the State shall otherwise change so as to conflict with any provision of this Consent Judgment, the Attorney General of such State shall not unreasonably withhold its consent to the modification of such provision to the extent necessary to eliminate such conflict.

Laws, rules, or regulations, or other change in State law, with respect to the matters governed by this Consent Judgment, shall be deemed to "conflict" with a provision of this

Consent Judgment if Defendant cannot reasonably comply with both such law, rule, or regulation and an applicable provision of this Consent Judgment. If Defendant believes that it cannot reasonably comply both with this Consent Judgment and with applicable federal law, rules, or regulation, it may seek modification hereof.

3. Release of Claims. The State acknowledges by its execution hereof that this Consent Judgment constitutes a complete settlement and release of all civil claims on behalf of the State against Defendant and all of their officers, directors, members, employees, agents, attorneys, servants, representatives, and their successors and assigns (all such released parties shall be collectively referred to as the "Releasees"), with respect to all civil claims and causes of action which were asserted or which could have been asserted prior to the Effective Date under the above-cited consumer protection statutes and which were based upon the use of Activation Checks. The State agrees that it shall not proceed with or institute any additional civil action or proceeding based on the above-cited consumer protection statutes against the Releasees (including but not limited to an action or proceeding seeking restitution, injunctive relief, fines, penalties, attorneys' fees, costs, or other relief) for the use of any Activation Check by the Releasees prior to the Effective Date.

Notwithstanding the foregoing, the State may institute an action or proceeding to enforce the terms and provisions of this Consent Judgment or to take action based on future conduct by the Releasees. Defendant acknowledges that a violation of this Consent Judgment may be evidence of a violation of state law.

4. Preservation of Law Enforcement Action. Nothing herein precludes the State from enforcing the provisions of this Consent Judgment, or from pursuing any law enforcement action with respect to the acts or practices of Defendant not covered by this Consent Judgment or any acts or practices conducted after the Effective Date of this Consent Judgment.

5. Compliance with and Application of State Law. Nothing in this Consent Judgment will be construed to limit the authority of the Attorney General to protect the interests of the State or the people of the State. Accordingly, nothing herein relieves Defendant of its continuing duty to comply with applicable laws of the State nor constitutes authorization by the State for Defendant to engage in acts and practices prohibited by such laws. This Consent Judgment shall be governed by laws of the State.

6. Non-Admission. This Consent Judgment shall not be construed as, or deemed to be evidence of, an admission or concession on the part of Defendant of any liability or wrongdoing whatsoever, which is hereby expressly denied and disclaimed by Defendant.

7. Past and Future Practices. Nothing herein constitutes approval by the State of the Defendant's past or future practices. Defendant shall not make any representation contrary to this paragraph.



8. No Change to Substantive Rights. Nothing herein shall be construed to waive, modify, or change any substantive rights of other persons or entities against Defendant with respect to the acts and practices covered by this Consent Judgment.

9. Representations and Warranties. Defendant represents and warrants that it ceased the mailing of Activation Checks on or about March 15, 2006. Defendant further represents and warrants that it will implement the terms of this Consent Judgment in good faith and will advise the State of any errors or omissions in the implementation discovered by it. Defendant acknowledges the State's reliance on the foregoing representations.

10. Waiver of Service and Submission To Courts Jurisdiction. Defendant, by signing this Consent Judgment, waives service of process and voluntarily submits to the jurisdiction of this Court.

11. Authority: Senior Assistant Attorney General Jeffrey M. Dikman does not have authority to enter into Consent Decree without the additional signature of Deputy Robert Hannah, or of his designee.

Signed and Agreed to this 75 day of FEBRUARY, 2008.

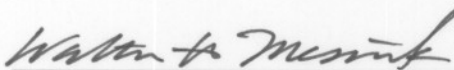
**DIRECTORY BILLING, LLC**  
a Florida Limited Liability Corporation,

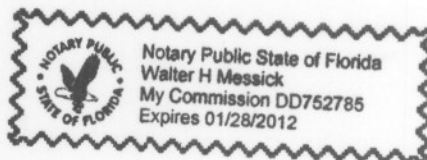


By: **FREDERICK MIDDLETON**, Managing Member

STATE OF FLORIDA  
COUNTY OF PALM BEACH

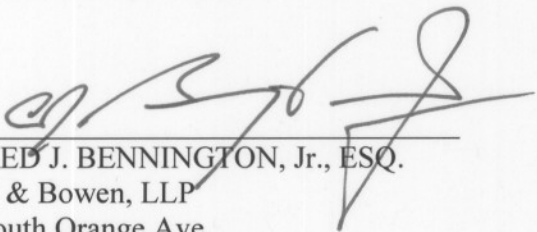
BEFORE ME, a notary public of the State of Florida appeared Frederick Middleton, who swore under oath that he is the Managing Member of Directory Billing, LLC, and who is either (Check One) ☒ known to me or who \_\_\_\_\_ produced the following identification: \_\_\_\_\_.

  
NOTARY PUBLIC  
AFFIX NOTARY SEAL



Agreed to this 22<sup>d</sup> day of February, 2008

Counsel for the Defendants:

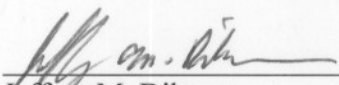


ALFRED J. BENNINGTON, Jr., ESQ.  
Shutts & Bowen, LLP  
300 South Orange Ave.  
Suite 1000  
P.O. Box 4956  
Orlando, FL 32802  
(407) 835-6755  
Fla Bar No. 404985

Agreed to this 30 day of March, 2008.

Counsel for Plaintiff:

BILL McCOLLUM  
ATTORNEY GENERAL



Jeffrey M. Dikman  
Senior Assistant Attorney General  
Office of the Florida Attorney General  
1515 North Flagler Drive, Suite 900  
West Palm Beach, FL 33401  
(561) 837-5025 (Ext. 120)  
561-837-5109 (Fax)  
Fla. Bar No. 274224

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2008

\_\_\_\_\_  
Deputy Robert A. Hannah  
Office of the Attorney General  
The Capitol, PL 01  
Tallahassee, FL 32399-1050  
850-414-3300  
Florida Bar #127577

**SO ORDERED**, this \_\_\_\_\_ day of \_\_\_\_\_, 2007

\_\_\_\_\_  
**JUDGE**

Copies to:

Bud Bennington, Esq., 300 South Orange Avenue, Suite 1000, P.O. Box 4956, Orlando, FL  
32802

Jeffrey M. Dikman, Sr. AAG, Office of the Attorney General, 1515 North Flagler Drive, Suite  
900, West Palm Beach, FL 33401.

EXHIBIT A

**Notice of Important Legal Rights**

<Company Name>  
<Address>  
<City>, <State> <Zip>  
ACCOUNT: <Account ID>

**Dear Customer:**

You currently are being billed by Directory Billing, LLC. d/b/a Directory Billing and USdirectory.com for Internet-based yellow pages advertising at our Website, USdirectory.com, which provides you with a presence on the internet and increased exposure to your customers for the monthly fee of \$< > per month.

As part of a settlement between us and the Attorney General of your state, concerns were expressed about whether your business intended to purchase our service. We are, therefore, writing to ensure that your company or organization intended to purchase our services. According to our records, we initially solicited your purchase by mailing you a check for \$3.25. By depositing or cashing the check, your company or organization automatically was signed up for Internet yellow pages advertising service, and after thirty (30) days the monthly fee was (withdrawn automatically from your business checking account) (assessed as a separate charge included as part of your monthly telephone bill).

If you did not intend to purchase our Internet advertising services and were signed up by mistake, and you desire to cancel your relationship with us, you may complete the **"Cancellation and Request for Refund"** portion of the enclosed form. We will refund to you an amount equivalent to your last two payments to us and refund any payments made to us since the date this notice was mailed to you by crediting the account you have been previously billed on. We will also cancel out any debt you might owe us.

Please use the enclosed envelope to return your form to Directory Billing, LLC, at \_\_\_\_\_ . After you complete and return the attached form, no further action will be required of you.

If you have any questions regarding this notification or offer, you may call our toll-free Customer Service Number at \_\_\_\_\_ .



**PLEASE NOTE THAT THE DEADLINE FOR POSTMARKING A REQUEST FOR A REFUND UNDER THIS OFFER IS \_\_\_\_\_.**

<Company Name>

ACCOUNT: <Account ID>

Directions: If you did not intend to purchase Internet advertising services from Directory Billing, LLC, and were signed up by mistake and without authorization, then you must complete this Cancellation and Refund by the Deadline.

**REQUEST FOR CANCELLATION AND REFUND**

I, \_\_\_\_\_, have authority to submit this Cancellation and to complete this Request for Refund on behalf of <Company Name>.

I hereby advise that <Company Name> did not knowingly purchase or authorize the purchase of a Directory Billing Internet Advertising Package or related Internet advertising services. <Company Name> desires to cancel its relationship with Directory Billing, LLC, and that all future billing for services provided by Directory Billing, LLC, be cancelled.

I affirm that I make the above statement of facts to the best of my knowledge and belief as to its truth.

\_\_\_\_\_  
Signature of Authorized Individual

**Response Instructions:** Please review and provide us with any missing or corrected contact information below so we can acknowledge your cancellation and process your request for a refund.

<Company Name> \_\_\_\_\_

<Address> \_\_\_\_\_

<City>, <State> <Zip> \_\_\_\_\_

<Account ID> \_\_\_\_\_

**DEADLINE NOTICE:**

**TO RECEIVE THIS OFFER, YOUR RESPONSE MUST BE POSTMARKED NO LATER THAN \_\_\_\_\_.** If you have any questions regarding this notification or offer, you may call our toll-free Customer Service Number at \_\_\_\_\_

Envelope

Settlement With<STATE> ATTORNEY GENERAL  
Directory Billing, LLC.  
USdirectory.com  
999 West Yamato Road  
Suite 100  
Boca Raton, Florida 33431

**NOTICE OF IMPORTANT LEGAL RIGHTS**

(Settlement Notice)

<Name of Customer>  
<Address of Customer>  
<Address of Customer>