

1 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

2 THIRD JUDICIAL DISTRICT AT ANCHORAGE

3
4 STATE OF ALASKA,)

5 Plaintiff,)

6 v.)

7 YELLOW PAGES, INC.,)

8 d/b/a www.YellowPagesInc.com,)

9 Electronics Directories Company, LLC,)

and JOHN WURTH,)

10 Defendants.)

11 Case No. 3AN-06-_____ Civil

12 **COMPLAINT FOR PERMANENT INJUNCTION AND OTHER RELIEF**

13
14 Plaintiff, State of Alaska, by and through the Attorney General of the State
15 of Alaska, David W. Márquez, and pursuant to the Alaska Unfair Trade Practices and
16 Consumer Protection Act, AS 45.50.471 *et seq.*, for its cause of action against the
17 defendants, Yellow Pages, Inc. dba www.YellowPagesInc.com, a Nevada corporation,
18 Electronic Directories Company, LLC, a California limited liability company, and John
19 Wurth, individually, and in his capacity as an owner and officer of Yellow Pages, Inc.
20 and Electronic Directories Company, LLC, alleges and states as follows:
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23 **PARTIES**

24 1. David Márquez is the Attorney General of the State of Alaska and
25 brings this action in the name of the State of Alaska and in his official capacity pursuant
26

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1 to AS 45.50.501 and AS 45.50.551, of the Alaska Unfair Trade Practices and Consumer
2 Protection Act (hereafter “Act”), upon the grounds that the Attorney General has reason
3 to believe that defendants have engaged in acts or practices declared unlawful in
4 AS 45.50.471, and that these proceedings are in the public interest.

5
6 2. Defendant Yellow Pages, Inc. (“YPI”) is a corporation organized
7 under Nevada law with a principal place of business located at 631 South Manchester,
8 Anaheim, CA 92802. YPI conducts business in Alaska primarily through the use of
9 direct mail solicitations sent into Alaska to Alaska business and other organization
10 consumers.

11
12 3. Electronic Directories Company, LLC (“EDC”), is a California
13 limited liability company located at 631 South Manchester, Anaheim CA 92802. EDC
14 conducts business in Alaska primarily through the use of direct mail solicitations sent
15 into Alaska to Alaska business and other organization consumers.

16
17 4. Defendant John Wurth is an individual residing in the State of
18 California. Said defendant is the owner and President of YPI and is the owner and
19 managing member of EDC.

20
21 5. For purposes of this Complaint for Injunctive and Other Relief, any
22 references to the acts and practices of YPI or EDC shall mean that such acts and
23 practices are by and through the acts of said entity’s officers, agents, servants,
24 employees, attorneys, and representatives; all other persons or entities directly or
25 indirectly under their control, wholly or partially; and all other persons and entities in
26 active concert or participation with them.

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JURISDICTION AND VENUE

6. This court has jurisdiction over this matter pursuant to AS 45.50.501, in that defendants have engaged in business in violation of AS 45.50.471 within the Third Judicial District.

7. Venue for this action properly lies in the Third Judicial District in Anchorage, pursuant to Alaska R. Civ. P. 3 (e).

BUSINESS PRACTICE ALLEGATIONS

8. Defendants YPI and EDC (hereafter referred to as "YPI") are in the business of soliciting and selling listings in and publishing both a business to business directory and a "yellow pages" directory on the Internet. In the course of soliciting business and other organization consumers to purchase listings in YPI's directories, YPI causes to be mailed to business and other organization consumers unsolicited direct mail yellow page solicitations.

9. Defendant John Wurth is the owner and president of YPI and is the owner and managing member of EDC. As such, Defendant John Wurth has responsibility for the overall management and oversight of the companies, including compliance with all state and federal statutes. He also has responsibility of supervising other officers, directors, and employees of the companies. As a result, Defendant John Wurth directs, actively participates in and has personal knowledge of the day-to-day activities of the companies.

1 10. Hereafter all references to “YPI” or “defendants” in this complaint
2 shall refer to defendants YPI, EDC and John Wurth, collectively.

3 11. YPI’s “yellow pages” directories are not affiliated with the
4 commonly known Yellow Pages directory compiled by various local telephone providers
5 across the country.

6 12. In the course of soliciting business and organization consumers to
7 purchase advertisement listings in YPI’s “yellow pages” internet directory, YPI mails
8 unsolicited direct mail solicitations (hereafter “solicitations”) to Alaska businesses,
9 churches, schools, non-profits and other organizational consumers (hereafter “Alaska
10 businesses”.)

11 13. YPI’s direct mail solicitation is in the form of a check for \$3.49 and
12 an attached check stub.

13 14. The check appears to be a refund from the organization’s local
14 telephone directory because of the following:

15 a. YPI mails the checks in a plain, white envelope with the
16 words “**CHECK ENCLOSED**” written on the outside;

17 b. Aside from the words “**CHECK ENCLOSED**”, the
18 envelope is blank. YPI does not include any information on the outside of the envelope
19 indicating that it is a solicitation;

20 c. The envelope has two windows, one revealing that the name
21 of the recipient’s business is listed on the “Pay To” line of the check, along with YPI’s
22 name and address and the other window displaying the recipient’s name and address;

1 d. The check typically has a phone number or a fictitious
2 account number created by YPI and an advertising category listed on the “Memo” line
3 of the check, which makes the check appear to be for an existing yellow page business
4 account.

5 15. Defendants mail the checks to Alaska businesses who have not
6 ordered any services from YPI, for whom YPI has performed no services and with
7 whom YPI has no business relationship.

8 16. Often, defendants mail multiple \$3.49 checks to one business or
9 organization, sometimes addressing them to different employees or addresses of the
10 same business.

11 17. On the back of the YPI check is a disclaimer, indicating an
12 agreement to place an advertisement in YPI’s “yellow pages” directory.

13 18. According to YPI, any business which deposits or cashes YPI’s
14 check is automatically bound by a contract to advertise in YPI’s “yellow pages”
15 directory for \$179 per year, billed in advance.

16 19. YPI does not adequately disclose that the check is a solicitation. Its
17 incredibly dense disclaimer in tiny print on the reverse side of the check or the
18 advertising materials it sometimes includes with the check is wholly insufficient.

19 20. Alaska businesses and organizations cashed the check without
20 realizing it is a solicitation for services, or that cashing it purports to obligate them to a
21 contract for one year of YPI’s directory advertising services.

1 21. In numerous instances, Alaska businesses received YPI's check,
2 and believing that it was a refund or other payment for services from the local telephone
3 company's Yellow Pages directory for which they already had a prior or existing
4 contract for advertising, deposited or cashed the check.

5 22. In numerous instances, Alaska businesses received YPI's check,
6 and believing that it was a routine check for deposit, endorsed and then deposited the
7 check. Many businesses indicated that the check got forwarded by a receptionist or
8 accounting clerk to its company's automatic deposit account. YPI's check is often never
9 seen by a person with the authority to purchase advertising or authorize contracts on
10 behalf of the business.
11

12 23. A few weeks following the cashing of the check, YPI mails Alaska
13 businesses and other organizations an invoice for \$179 for its Internet directory
14 advertising service.
15

16 24. Some Alaska businesses believed this was an error and simply did
17 not pay for the services. Many Alaska businesses contact YPI to correct what they
18 believed was an error or to cancel any alleged contract for services by explaining they
19 were not aware that they had contracted and did not intend to contract for such services.
20 Often, they could not get a hold of anyone at YPI. Even when they were successful in
21 reaching a YPI representative, YPI typically responded that such business is obligated to
22 pay for the services because they cashed the check and failed to cancel the contract
23 within thirty (30) days.
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25. If YPI does not receive payment from the business or organization, they may also send them a letter explaining that the business has contracted for a year of its services by cashing the check.

26. If the business or organization does not pay the bill, YPI turns it over to its collection service, Continental Recovery and Filing Solutions (“CRS”), who then starts dunning the Alaska business or organization. CRS then begins demanding payment of the \$179 plus interest and threatening to “proceed against you” unless payment is made immediately. The collection notices also threaten that the credit rating of the business or organization may be affected by nonpayment.

27. YPI subsequently sent renewal notices to Alaska businesses and organizations that had previously received and cashed a YPI check solicitation. The renewal notice was a solicitation for the order of YPI’s enhanced listing directory services, but was in a form or format which reasonably could have been considered to be a bill, invoice or statement of account due by the business or organization. The notices failed to provide adequate disclosures to the business or organization that the notice was not a bill, that it was a solicitation, and that the business or organization was under no obligation to pay the amount stated unless the offer is accepted by the business.

COUNT I

**VIOLATIONS OF THE UNFAIR TRADE PRACTICES
AND CONSUMER PROTECTION ACT**

28. Plaintiff re-alleges all of the above paragraphs 1 – 27.

29. YPI’s use of a check as a solicitation without providing adequate notice that the check is a solicitation for services creates a likelihood of confusion or

1 misunderstanding and has the tendency and capacity to mislead and deceive Alaska
2 businesses and other organizations.

3 30. YPI's use of a check as a solicitation without providing adequate
4 notice that the cashing of the check obligates those who cash it to a contract for one year
5 of YPI's directory advertising services creates a likelihood of confusion or
6 misunderstanding and has the tendency and capacity to mislead and deceive Alaska
7 businesses and other organizations.

8 31. YPI's use of a check as a solicitation creates a likelihood of
9 confusion or misunderstanding and has the tendency and capacity to mislead and
10 deceive Alaska businesses and other organizations into believing that they are receiving
11 a refund or rebate for an existing account with their local telephone directory service or
12 a refund from another company with which they already have a contract for services.

13 32. YPI's use of solicitations in the form of its checks causes a
14 likelihood of confusion or misunderstanding by Alaska businesses as to the source of the
15 check.

16 33. YPI's use of solicitations in the form of its checks causes a
17 likelihood of confusion or misunderstanding by Alaska businesses and other
18 organizations as to YPI's connection or association with another,

19 34. YPI's use of solicitations in the form of its checks represents that
20 YPI's services have characteristics, uses or benefits that they do not have (that the
21 mailing is a refund, when it is a solicitation, and that it is a refund or rebate from a
22 company with which recipients have a contract for services, when it is not).

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35. YPI’s use of a renewal form that reasonably could be interpreted or construed to be a bill, invoice or statement of account due, but which in fact is a solicitation for the order of YPI’s services, without providing the disclosures required under the Postal Reorganization Act, 39 U.S.C. section 3001 (d), and the Domestic Mail Manual (DMM) section CO31, parts 1.1 – 1.6, constitutes a violation of federal law, and is a per se unfair or deceptive act or practice.

36. YPI’s conduct as described in this Complaint constitutes unfair or deceptive acts or practices in violation of the Alaska Unfair Trade Practices and Consumer Protection Act, AS 45.50.471 (a) and (b) (3), (4) and (11).

37. Defendant John Wurth had personal knowledge of and actively and knowingly participated in and directed the conduct of YPI described in this Complaint, which conduct constitutes unfair or deceptive acts or practices in violation of the Unfair Trade Practices and Consumer Protection Act, AS 45.50.471 (a) and (b) (3), (4) and (11), and is personally and individually liable for all such violations by YPI.

RELIEF

WHEREFORE, plaintiff, the State of Alaska by its Attorney General, David Márquez, respectfully asks this Court to award judgment against Yellow Pages, Inc., Electronic Directories Company, LLC and John Wurth (hereafter “YPI”):

38. Declaring that YPI’s acts described in this Complaint constitute separate, multiple violations of AS 45.50.471 (a) and (b) (3), (4) and (11).

39. Pursuant to AS 45.50.501 (a) enjoining YPI and their employees, agents, successors, assigns, affiliates, merged or acquired predecessors, parent or

1 controlling entities, subsidiaries, and all other persons acting in concert or in
2 participation with YPI, from engaging in the conduct described herein that violates
3 AS 45.50.471 (a) and (b) (3), (4) and (11).

4 40. Awarding judgment against YPI for civil penalties pursuant to
5 AS 45.50.551.


6 41. Awarding judgment against YPI for restitution pursuant to
7 AS 45.50.501 (b) for all persons or entities injured by YPI's acts as described in this
8 Complaint.
9

10 42. Awarding plaintiff its costs, including costs of investigation and
11 attorney fees, as authorized by AS 45.50.537 (d).
12

13 43. Granting such further relief as the Court deems appropriate and
14 just.

15 DATED this 21st day of April, 2006, at Anchorage, Alaska.

16
17 DAVID W. MÁRQUEZ
18 ATTORNEY GENERAL

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