

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 30TH JUDICIAL CIRCUIT
INGHAM COUNTY

In The Matter Of:

DIRECTORY BILLING, LLC
Respondent.

File No. 08-230-CP

Hon. Joyce Draganchuk

AG File No. 2006019567A

ASSURANCE OF DISCONTINUANCE

MICHAEL A. COX
ATTORNEY GENERAL

Kathy Fitzgerald
Assistant Attorney General
Consumer Protection Division
525 W. Ottawa Street
6th Floor Williams Building
Lansing, MI 48913
(517) 335-0855

Dated Filed: March 3, 2008

1
2
3 IN THE MATTER OF:

4 DIRECTORY BILLING, LLC, a Florida
5 Limited Liability Company
6 d/b/a Directory Billing and d/b/a
7 USDirectory.com,

8 Respondent.

9
10 **ASSURANCE OF DISCONTINUANCE**

11 1.

12 DIRECTORY BILLING, LLC, a Florida Limited Liability Company d/b/a DIRECTORY
13 BILLING and d/b/a USDIRECTORY.COM, does business in Michigan and is the Respondent
14 herein. The Respondent solicited customers for internet yellow page advertising through
15 distribution of activation checks that when cashed by the recipient allegedly created a contractual
16 relationship to purchase advertising. This Assurance of Discontinuance (Assurance) is between
17 the Respondent and the Department of Attorney General, State of Michigan (State) acting
18 pursuant to the provisions of the Michigan Consumer Protection Act (MCPA), MCL 445.901 et
19 seq.

20 **GENERAL PROVISIONS**

21 2.

22 This Assurance of Discontinuance (Assurance) is a settlement of a disputed matter. It
23 shall not be considered an admission of a violation for any purpose. Respondent and the State
24 agree that no provision of the Assurance operates as a penalty, forfeiture, or punishment under
25 the Constitution of the United States, or under the Constitution and laws of the State.

26 ///

///

1 3.

2 Respondent waives receipt of a notice from the State of the alleged unlawful trade
3 practice and the relief to be sought.

4 4.

5 Respondent understands and agrees this Assurance applies to Respondent, its principals,
6 officers, members, directors, agents, employees, representatives, successors and assigns, jointly
7 and severally, while acting personally, or through any corporation or other business entities,
8 whose acts, practices or policies are directed, formulated or controlled by Respondent.

9 5.

10 Respondent and Respondent's attorney agree and understand that following acceptance of
11 the Assurance by the State that the enforcement officers and staff of the State may communicate
12 directly with Respondent for the purpose of executing and enforcing the terms of this agreement
13 and resolving future complaints.

14 6.

15 Respondent understands and agrees that if this Assurance is accepted by the State it will
16 be filed with the Circuit Court for the 30th Judicial Circuit, Ingham County, Michigan pursuant to
17 MCL 445.906(2).

18 7.

19 Respondent waives any further notice of submission to and filing with the court of this
20 Assurance. Respondent agrees to accept service of a copy of the Assurance as filed with the
21 Ingham County Circuit Court from the State by prepaid first class mail sent to its attorney.

22 8.

23 Respondent agrees that for this Assurance to be accepted by the State a corporate check
24 for the amount set out herein must be represented by Respondent's counsel to have been mailed
25 to the Florida Attorney General's office. Respondent and the State agree that the terms of this
26 Assurance apply only to the Respondent and the State. The terms of this Assurance track those
of the other 25 Settling States, some of whom are entering into Consent Judgments and others

1 entering Assurances which Judgments and Assurances are similar to each other and to this
2 Assurance.

3 9.

4 The parties acknowledge that no other promises, representations, or agreements of any
5 nature have been made or entered into by the parties. The parties further acknowledge that this
6 Assurance constitutes a single and entire agreement that is not severable or divisible, except that
7 if any provision herein is found to be legally insufficient or unenforceable, the remaining
8 provisions shall continue in full force and effect.

9 **DEFINITIONS**

10 10.

11 The following definitions shall be used in interpreting the terms of this Assurance.

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

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

22 **Activation Check Customer** means any individual, business, church, institution,
23 governmental agency or other organization which was initially solicited by the Respondent
24 through an Activation Check and who activated an account through the deposit of an Activation
25 Check and thereafter was subjected to billing by the Respondent through an automated billing
26 channel including a Local Exchange Company (LEC) or telephone bill, an automatic bank draft

1 or ACH draft posted against the Activation Check Customer's bank account, or a recurring
2 charge posted against the credit card and that made at least one payment to the Respondent.

3 **Current Activation Check Customer** means any Activation Check Customer which
4 made a payment to the Respondent, directly or through a third party, within 30 days of the
5 Effective Date of this Assurance, through or in response to any automated billing channel.
6 Current Activation Check Customer does not include any customer that made a payment by
7 mailing a check to the Respondent in response to a written invoice mailed to it by the
8 Respondent, and/or a Customer who logged into their account with Respondent.

9 **Effective Date** means the 1st of March, 2008.

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

12 **Represent** means to state, or to imply through statements, questions, conduct, graphics,
13 symbols, lettering, formats, devices, language, documents, messages, or through any other
14 manner or means by which meaning might be conveyed. For purposes of this Assurance, this
15 definition applies to other forms of the word Represent, including without limitation
16 Representation. In determining the express or implied meaning of a Representation that appears
17 from the outside of a mailing envelope, only matter visible without opening the envelope shall be
18 considered.

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

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

24 ///

25 ///

26

1 **INJUNCTIVE TERMS**

2 11.

3 **A. Promotional Practices**

4 Termination of Use of Activation Checks. In connection with the advertisement, offer
5 for sale or sale of goods or services, the Respondent shall not, directly or indirectly, send to
6 individuals, businesses, churches, institutions, governmental agencies or other organizations any
7 solicitation that contains an Activation Check. Respondent shall obey Michigan's Consumer
8 Protection Act, MCL 445.901 and following.

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

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

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

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

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

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

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

24 ///

25 ///

26

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

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

14 B) Payment to Qualified Requests for Refund. The Respondent shall remain
15 responsible for ensuring that payment of any requested refund shall be made under the
16 terms of this Section and shall take all reasonable efforts to complete that payment. If,
17 after reasonable efforts, a payment has not been made to a qualified Current Activation
18 Check Customer that has requested a refund, Respondent shall provide a written report to
19 the State identifying such recipients and the efforts made to complete payment. Within
20 ninety days of receiving such report, the State may direct payment by Respondent of
21 those claimed amounts to any designated State agency responsible for holding unclaimed
22 funds for the benefit of that qualified Current Activation Check Customer.

23 4. Non-Exclusivity of Redress. Nothing in this Assurance shall be construed as limiting
24 the ability of the Respondent to offer additional refunds, credits or other redress which exceeds
25 the requirements of this agreement. The Respondent shall continue to honor any private
26 agreements reached with individual customers in resolving any disputes.

1 applied to restitution programs for any purpose provided by state law, including reimbursement
2 of attorney fees and to defray the costs of the enforcement and investigations leading to this
3 Assurance, as permitted by the laws of the State.

4 RECORDS AND COMPLIANCE

5 13.

6 **A. Provision of Records.**

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

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

22 3. Former Activation Check Customer Records Respondent shall provide, within
23 twenty (20) business days of receipt of any request from one of the Settling States, a list of all
24 Activation Check Customers who are no longer customers of the Respondent. The list shall state
25 the former customer's full name, address, telephone number, account number, the dates during
26 which the customer's account was open, the total amount paid by the customer to Respondent
since January 1, 2004, and any amount that was refunded, reimbursed or credited against those

1 amounts paid prior to the Effective Date of this Assurance (i.e., any set-off asserted by
2 Respondent). Respondent will accept such requests from a Settling State by e-mail, telefax or
3 telephone, in addition to mail.

4 **B. Availability of Records**

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

16 **GENERAL AND ADMINISTRATIVE PROVISIONS**

17 14.

18 1. Modification. Jurisdiction is retained for the purpose of enabling any party to this
19 Assurance to apply to the Court at any time for such orders and directions as might be necessary
20 or appropriate for the modification, construction, or carrying out of the injunctive provisions of
21 this Assurance, or for the enforcement of and the punishment of violations of any provisions
22 hereof. The parties by stipulation may agree to a modification of this Assurance, which
23 agreement may be presented to the Court for consideration if appropriate, provided that the
24 parties may jointly agree to a modification only by a written instrument signed by or on behalf of
25 both the State and the Respondent.

26 Any party to this Assurance may petition the Court for modification on thirty (30) days
notice to all other parties to this Assurance. If Respondent wishes to seek a stipulation for a

1 modification from the State, it shall send a written request for agreement to such modification to
2 the Attorney General of the State at least thirty (30) days prior to filing a motion with the Court
3 for such modification.

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

13 Laws, rules, or regulations, or other change in State law, with respect to the matters
14 governed by this Assurance, shall be deemed to "conflict" with a provision of this Assurance if
15 the Respondent cannot reasonably comply with both such law, rule, or regulation and an
16 applicable provision of this Assurance. If the Respondent believes that it cannot reasonably
17 comply both with this Assurance and with applicable federal law, rules, or regulation, it may
18 seek modification hereof.

19 3. Release of Claims. The State acknowledges by its execution hereof that this
20 Assurance constitutes a complete settlement and release of all civil claims on behalf of the State
21 against the Respondent and all of its officers, directors, members, employees, agents, attorneys,
22 servants, representatives, and their successors and assigns (all such released parties shall be
23 collectively referred to as the "Releasees"), with respect to all claims and causes of action that
24 were asserted or that could have been asserted prior to the Effective Date under the above-cited
25 consumer protection statute and that were based upon the use of Activation Checks. The State
26 agrees that it shall not proceed with or institute any additional civil action or proceeding based
upon the above-cited consumer protection statute against the Releasee (including but not limited

1 to an action or proceeding seeking restitution, injunctive relief, fines, penalties, attorneys' fees,
2 costs, or other relief) for the use of any Activation Check by the Releasee prior to the Effective
3 Date.

4 Notwithstanding the foregoing, the State may institute an action or proceeding to enforce
5 the terms and provisions of this Assurance or to take action based on future conduct by the
6 Releasees. The Respondent acknowledges that a violation of this Assurance may be evidence of
7 a violation of state law.

8 4. Preservation of Law Enforcement Action. Nothing herein precludes the State from
9 enforcing the provisions of this Assurance, or from pursuing any law enforcement action with
10 respect to the acts or practices of the Respondent not covered by this Assurance or any acts or
11 practices conducted after the Effective Date of this Assurance.

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

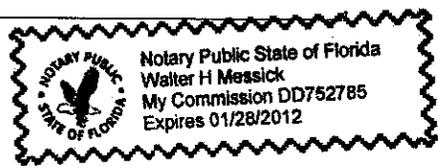
18 6. Non-Admission. This Assurance shall not be construed as, or deemed to be evidence
19 of, an admission or concession on the part of the Respondent of any liability or wrongdoing
20 whatsoever, which is hereby expressly denied and disclaimed by the Respondent.

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

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

1 BEFORE ME, a notary public of the State of Florida appeared Frederick **Middleton**, who
2 swore under oath that he is the Managing Member of Directory Billing, LLC and who is
3 either (Check One) known to me or who _____ produced the following
4 identification: _____

5 Walter H Messick
6 NOTARY PUBLIC
7 AFFIX NOTARY SEAL



8 Approved as to form this 27th day of February, 2008.

9 Counsel for the Respondent
10 Alfred Bennington
11 ALFRED BENNINGTON, ESQ.
12 Shutts & Bowen, Llp
13 300 South Orange Ave.
14 Suite 1000
15 P.O. Box 4956
16 Orlando, FL 32802
17 (407) 835-6755
18 Fla. Bar No. 404985

19 Agreed to this 28th day of February, 2008

20 MICHAEL A. COX
21 ATTORNEY GENERAL
22 Kathy Fitzgerald
23 Kathy Fitzgerald (P71545)
24 Assistant Attorney General
25 Consumer Protection Division
26 PO Box 30213
Lansing, MI 48909
Phone: (517) 335-0855
Fax: (517) 3735-1935

1 EXHIBIT A

2 **Notice of Important Legal Rights**

3 <Company Name>
4 <Address>
5 <City>, <State> <Zip>
6 ACCOUNT: <Account ID>

6 **Dear Customer:**

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

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

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

25 ///

26 ///

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

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

6 **PLEASE NOTE THAT THE DEADLINE FOR POSTMARKING A REQUEST FOR A**
7 **REFUND UNDER THIS OFFER IS _____ .**

8 <Company Name>
9 ACCOUNT: <Account ID>

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

13 **REQUEST FOR CANCELLATION AND REFUND**

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

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

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

22
23 _____
24 Signature of Authorized Individual
25
26

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

4 <Company Name> _____

5 <Address> _____

6 <City>, <State> <Zip> _____

7 <Account ID> _____

8 **DEADLINE NOTICE:**

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

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Envelope

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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>