

**IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT  
IN AND FOR DUVAL COUNTY, FLORIDA**

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

Plaintiff,

v.

CASE NO.:  
DIVISION:

UNITED DIRECTORIES, INC. a Florida  
Profit Corporation, d/b/a YELLOW PAGES  
UNITED, and MARK S. SMITH, an  
individual,

Defendants.

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**COMPLAINT FOR PERMANENT INJUNCTIVE RELIEF, CIVIL  
PENALTIES, AND OTHER EQUITABLE  
AND STATUTORY RELIEF**

Plaintiff, Office of the Attorney General, State of Florida, Department of Legal Affairs, (hereinafter referred to as the "Attorney General"), sues Defendants, United Directories, Inc., a Florida profit corporation doing business as Yellow Pages United, (hereinafter referred to as "United"), and Mark S. Smith, an individual (hereinafter referred to as "Smith") (collectively "Defendants"), and alleges as follows:

**SUMMARY OF THE CASE**

1. Defendants operate a nationwide online "yellow pages" business directory that deceives consumers into paying approximately \$396 semi-annually

for an automatically-renewing subscription for a listing in an obscure, little-used online business telephone directory

2. Since May 23, 2000 to present, Defendants have operated their online business directory and since at least 2011 have continuously engaged in unfair and deceptive trade practices as described more fully below.

3. Since 2011, consumers in Florida harmed by Defendants' unfair and deceptive trade practices have submitted more than 1,848 complaints to the Florida Attorney General, the Federal Trade Commission, other agencies, and the Better Business Bureau concerning Defendants' (1) marketing of their directory listing, and (2) invoicing and collection practices.

4. The Attorney General brings this action for injunctive and other equitable and statutory relief, including restitution to consumers, disgorgement of profits by the Defendants, civil penalties, reasonable attorney's fees and costs, and other appropriate relief pursuant to the Florida Deceptive and Unfair Trade Practices Act, Chapter 501, Part II, Florida Statutes (2018) ("FDUTPA"), including sections 501.207(1) and (3), Florida Statutes (2018).

### **JURISDICTION AND VENUE**

5. The Court has jurisdiction pursuant to the provisions of FDUTPA as well as section 26.012(2)(c), Florida Statutes (2018).

6. The amount at issue is in excess of \$15,000, exclusive of fees and costs.

7. Venue is proper in the Fourth Judicial Circuit Court, in and for Duval County, Florida, as the registered principal place of business of United is in Duval County, Florida, and the violations alleged herein occurred as a result of United having conducted, and continuing to conduct, business in Duval County, Florida. Smith is a resident of St. Johns County, Florida.

8. The alleged statutory violations affect more than one judicial circuit of the State of Florida. Additionally, the State Attorney's Office has waived jurisdiction in writing to the Attorney General, pursuant to section 501.203(2), Florida Statutes (2018).

### **PLAINTIFF**

9. The Attorney General is an enforcing authority of FDUTPA, which prohibits unfair and deceptive acts or practices in the conduct of any trade or commerce. The Attorney General is authorized by FDUTPA to seek injunctive and other statutory relief pursuant to the provisions of this part.

10. Attorney General Ashley Moody has conducted an investigation and has determined that an enforcement action serves the public interest.

### **DEFENDANTS**

11. United is a Florida profit corporation, doing business as Yellow Pages United, and is registered with the Florida Department of State, with its principal place of business located at 115 Penman Rd., Neptune Beach, FL 32266.

12. At all times material hereto, Defendants advertised, solicited, and offered to provide online directory services and engaged in “Trade or commerce” as defined in Section 501.203(8), Florida Statutes.

United’s business practices and business model were controlled by Smith. Smith is a resident of St. Johns County, Florida, having a residence located at 2327 Bishop Estates Rd., Saint Johns, FL 32259. Smith formed United on May 23, 2000. Throughout the existence of United, Smith has been the company’s sole shareholder and has controlled the operation of the company and directly participated in the conduct and practices alleged herein. Smith is thereby jointly and severally responsible and liable for the FDUTPA violations committed by United that are alleged herein.

**GENERAL ALLEGATIONS**  
**COMMON TO ALL CAUSES OF ACTION**

**Marketing Practices**

13. Defendants market their business directory listings by sending unsolicited, direct mail solicitations to consumers in the United States whose names and addresses the Defendants obtain from various lead-generation sources and public records.

14. Defendants use a variety of deceptive and misleading tactics to induce consumers to sign and return the initial solicitation and subsequently to pay false invoices that are sent to the consumers by United. The Defendants’ initial

solicitation includes numerous statements and omissions of material fact that are calculated and likely to mislead and to confuse a reasonable consumer who receives the solicitation, including, but not limited to the following:

a. The initial solicitation makes use of the term “yellow pages” and prominently features the familiar “walking fingers” logo, both commonly associated with AT&T and the Real Yellow Pages, leading many consumers to believe that United is affiliated with or is distributed in a manner comparable to the Real Yellow Pages directory;

b. The solicitation is deceptively designed to appear to be a benign information update rather than an order form and fails to clearly and conspicuously disclose that the purpose of the solicitation is to obtain an order for a new listing in the Defendants’ telephone directory. The solicitation features a “reference number” in multiple places and creates the false impression that the consumer has an existing account with United and its purpose is to simply verify information about the consumer’s name, address, and phone number so that it correctly appears in the existing directory;

c. The instructions at the top of the solicitation do not mention the cost to subscribe and there is large, prominent text reading “THIS IS NOT A BILL”. There is also a line of text above the reply card stating “NO

ADDITIONAL CHARGES TO INCLUDE YOUR FAX, TOLL-FREE NUMBER AND WEB ADDRESS”;

d. The solicitation fails to clearly and conspicuously disclose that listings are renewed automatically and in perpetuity causing the consumer to be charged \$396.00 each period, until cancelled by the consumer.

15. When a consumer confirms information as listed on the solicitation form or submits corrected information to what the consumer believes is an existing listing, United treats the return of the solicitation as a binding agreement for a new listing in the Defendants’ directory and for automatic renewal of the listing.

#### **Invoicing and Billing Practices**

16. After a consumer returns the initial mail solicitation to United, United sends an invoice (the “Invoice”) to the consumer.

17. The Invoice contains a section to obtain the consumer’s credit card information including the consumer’s signature.

18. The Invoice fails to disclose that the consumer’s credit card will be billed automatically every six months, the amount the consumer will be billed, that the consumer must cancel to avoid additional charges, and other material facts necessary for a consumer to make an informed decision.

19. Many consumers routinely pay United’s Invoices without investigating how or why they are being billed by United or pay the Invoice in the mistaken belief

that they are paying for a listing in the Real Yellow Pages directory and without realizing that charges for the directory will continue to be billed to their credit cards.

20. Some consumers send checks to United in payment of the Invoice made out simply to “Yellow Pages,” without any indication that the consumer is aware that United is not the Real Yellow Pages. United cashes and deposits checks that are made payable in this manner.

21. Some consumers discover when they receive an Invoice from United that they were misled by United’s solicitation in that (a) they did not intend to subscribe to a new directory listing, (b) they thought they were updating an existing listing in the Real Yellow Pages, (c) they have no existing business relationship with United, (d) the solicitation was signed by mistake or in error, or (e) a clerical employee (or, in the case of a charity, often a volunteer) has signed who does not have legal authority to sign contracts on behalf of the consumer.

22. When consumers inquire and dispute owing any money to United for these reasons, United asserts that a “legally binding agreement” was created when the consumer’s employee or volunteer signed and returned United’s solicitation.

23. If a consumer objects to paying an invoice for any of the foregoing reasons, United attempts to collect the full amount of the invoice, collect monthly payments on the balance purportedly owed, or to collect a discounted amount of the balance from the consumer.

24. Defendants use a variety of deceptive and misleading letters to induce consumers to pay these invoices. Defendants send various “collection” letters that contain misleading statements to suggest falsely that the account is legally enforceable and the consumer’s failure to pay may have consequences on the consumer’s credit or financial obligation to Defendants: including, but not limited to the following:

a. “Notice of Non-Payment”

b. “Our records indicate that your account continues to be **overdue**”

(emphasis in original)

c. “It is our goal to work with you in getting your account back into good standing”

d. “[W]e are requesting immediate payment for all **past due balances**” (emphasis in original)

e. “Please contact our Customer Service Department . . . to make a payment arrangement or further discuss your account standing”

f. “Past Due Notice”

g. “Our records indicate that your account has an **overdue balance**”

(emphasis in original)

h. “We are sending you this notice in an effort to prevent your account from accruing late fees and additional unwanted costs”



i. “[P]lease contact our Account Recovery Department or submit immediate payment for services provided”

## COUNT I

### **DEFENDANTS’ DECEPTIVE TRADE PRACTICES VIOLATE FDUTPA**

25. The Attorney General adopts, incorporates, and realleges by reference paragraphs 1-24 herein.

26. Section 501.204(1), Florida Statutes (2018) provides, in pertinent part, that, “unfair and deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.”

27. In connection with the offer or sale of telephone directory listings, Defendants have committed and are continuing to commit deceptive acts and practices in a trade or commerce in the following ways:

a. Solicitation - Marketing their directory listings to consumers by using a solicitation that:

1) creates the false impression that United is the publisher or is affiliated with the publisher of the consumers’ local online business telephone directory or the Real Yellow Pages when in fact United is not the publisher nor affiliated with the publisher of any local yellow page directory or the Real Yellow Pages and its directory is only viewable

by accessing the company's two websites directly and not through a typical online search;

2) fails to clearly and conspicuously disclose that the purpose of the solicitation is to obtain orders for a new directory listing in United's directories, and that leaves consumers with the false impression that the purpose of the solicitation is to simply confirm information about the consumer in an existing directory listing;

3) fails to clearly and conspicuously disclose the cost and the automatic renewal terms of a listing in United's directory.

b. Collections - Misleads consumers, expressly or by implication, through telephone calls, invoices, or past due "settlement" letters, to believe that they have agreed to purchase and have authorized a listing in United's business telephone directory.

28. By the acts and practices described above, Defendants have violated section 501.204(1), Florida Statutes (2018) and made material representations or omissions that mislead or are likely to mislead consumers acting reasonably under the circumstances.

29. By occupying a position of control over United, actually controlling the practices of United, or personally participating in United's unlawful conduct, Smith is jointly and severally liable for United's FDUTPA violations.

30. As a direct result of Defendants' unlawful conduct in violation of FDUTPA, consumers have been injured and suffered harm, and are entitled to disgorgement and restitution from Defendants. Likewise, the Court should cancel and void any purported obligations of consumers to United that are based upon the unlawful business practices described herein.

31. Defendants' acts and business practices described above were "willful" as set forth in sections 501.2075 and 501.2077, Florida Statutes (2018), thereby entitling the Attorney General to recover civil penalties and attorney's fees, costs, and experts' fees from Defendants pursuant to those statutes.

32. Sections 501.207(1)(b) and 501.207(3), Florida Statutes (2018) empower this Court to grant injunctive and such other relief as the Court may deem appropriate to halt and redress violations of FDUTPA. The Court, in the exercise of its equitable jurisdiction, may award ancillary relief, including rescission or reformation of contracts, appointment of a receiver, restitution, the refund of monies paid, the sequestration or freezing of assets, and the disgorgement of ill-gotten monies, to prevent and remedy any violation of FDUTPA.

## COUNT II

### **DEFENDANTS' UNFAIR TRADE PRACTICES VIOLATE CHAPTER 501, PART II, FLORIDA STATUTES**

32. The Attorney General adopts, incorporates, and realleges herein by reference paragraphs 1-24 herein.

33. Section 501.204(1), Florida Statutes (2018) provides, in pertinent part, that, “unfair and deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.”

34. In connection with the offer or sale of telephone directory listings, Defendants have committed and are continuing to commit unfair acts and practices in the following two ways:

a. Solicitation - Deceiving consumers as to the true nature and cost of the product they are selling by making it appear that consumers are renewing a free listing in their locally distributed Real Yellow Pages, when in reality the Defendants plan to bill the consumers approximately \$792 a year [earlier semi-annually is used] for a directory that has limited circulation or benefit to consumers.

b. Collections - Misleading consumers, expressly or by implication, through telephone calls, invoices, or past due “settlement” letters, that consumers have agreed to purchase and have authorized a listing in United’s business telephone directory. Consumers who dispute their obligation to

United are pressured by United's representatives into making monthly payments on their purported account balances or paying a reduced account balance to United.

35. As a result of Defendants' unfair acts and practices, Defendants have collected and retained payments from consumers which have been remitted to United on the basis of misrepresentation, misunderstanding or mistake.

36. Through the acts, practices, and devices described above, Defendants have received funds for which they have no legitimate right, title, or interest, and which represent the proceeds of business practices that violate FDUTPA.

37. Consumers have suffered and continue to suffer substantial economic injury as a result of Defendants' continuing violations of FDUTPA. Such injury is not outweighed by any countervailing benefits to consumers or competition and is an injury that consumers themselves could not reasonably have avoided. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

38. The unfair acts and practices complained of herein were and are to the injury and prejudice of the public and were "willful" within the meaning of sections 501.2075 and 501.2077, Florida Statutes (2018).

39. Sections 501.207(1)(b) and 501.207(3), Florida Statutes (2018) empower this Court to grant injunctive and such other relief as the Court may deem

appropriate to halt and redress violations of FDUTPA. The Court, in the exercise of its equitable jurisdiction, may award ancillary relief, including rescission or reformation of contracts, appointment of a receiver, restitution, the refund of monies paid, the sequestration or freezing of assets, and the disgorgement of ill-gotten monies, to prevent and remedy any violation of FDUTPA.

40. As a direct result of Defendants' unlawful conduct in violation of FDUTPA, consumers have been injured and suffered harm and are entitled to disgorgement and restitution from the Defendants. Likewise, the Court should cancel and void any purported obligations of consumers to United that are based upon the unlawful business practices described herein.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, Office of the Attorney General, State of Florida, Department of Legal Affairs, pursuant to FDUTPA, and the Court's equitable powers, requests that the Court:

1. Award the Attorney General temporary injunctive and ancillary relief as may be necessary to avert the likelihood of consumer injury during the pendency of this action;
2. Enter a permanent injunction to prevent future violations of FDUTPA by Defendants;

3. Award such relief as the Court deems necessary to redress injury to consumers resulting from Defendants' violations of FDUTPA, including, but not limited to, rescission or reformation of contracts and restitution to consumers injured by the Defendants' violations;

4. Require the Defendants to disgorge all of their ill-gotten gains obtained from their violations of FDUTPA;

5. Award the Attorney General its costs of bringing this action, including reasonable attorney's fees, costs, and expert fees from the Defendants jointly and severally;

6. Award the Attorney General civil penalties against the Defendants, jointly and severally, in the amount of Ten Thousand Dollars (\$10,000) for each violation of Chapter 501, Part II, pursuant to section 501.2075, Florida Statutes (2018), and civil penalties in the amount of Fifteen Thousand Dollars (\$15,000) for each violation in which a senior citizen, disabled person, or member of the U. S. Military was victimized, in accordance with section 501.2077, Florida Statutes (2018);

7. Retain jurisdiction over this action to implement and carry out the terms of all orders and decrees that may be entered by the Court; and

8. Grant such other preliminary and permanent relief as this Honorable Court deems just and proper.

Respectfully submitted this 30<sup>th</sup> day of May, 2019.

**ASHLEY MOODY**  
**Attorney General of the State of Florida**

/s/ Robert Meek

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