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Hearing Date: 1/18/08
Time: 10:00 a.m.

The Honorable Steven Gonzales

STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

STATE OF WASHINGTON,

Plaintiff,

v.

INTERNET ADVANCEMENT, INC.,
d/b/a 4GREATBUYS.COM, a
Washington for-profit corporation;
TODD WICKHAM, Chief Executive
Officer of INTERNET
ADVANCEMENT, INC., individually
and on behalf of his marital community;
KEN COMMITTEE, President of
INTERNET ADVANCEMENT, INC.,
individually and on behalf of his marital
community; and ERNESTO
VILLAMOR, Secretary and Treasurer
of INTERNET ADVANCEMENT,
INC., individually and on behalf of his
marital community,

Defendants.

NO. 04-2-20187-0SEA

PETITION FOR ENFORCEMENT OF
STIPULATED JUDGMENT

Plaintiff, State of Washington, petitions the Court for enforcement of a Stipulated Judgment entered in this matter on August 11, 2004. Pursuant to Chapter 19.86 RCW, the State of Washington alleges that defendants Internet Advancement, Inc., d/b/a 4Greatbuys.com; Todd Wickham, individually, and on behalf of his marital community; Ken Committee, individually, and on behalf of his marital community; and Ernesto Villamor, individually, and on behalf of his marital community (hereinafter referred to as "defendants") have committed violations of the injunctive provisions of the August 11, 2005 Stipulated

COPY

1 Judgment. A copy of the Stipulated Judgment, signed by Court Commissioner Kimberly D.
2 Prochnau, is attached hereto as Exhibit 1.

3 **I. FACTS**

4 Defendants are engaged in the business of providing search engine optimization
5 services. Businesses which market and sell products over the Internet often rely on search
6 engines to lead potential customers to their websites and therefore hire search engine
7 optimizers with the goal of improving traffic to their website. According to defendants, 90%
8 of users “never view sites listed under #20 on the Search Engine Rankings,” and the higher a
9 ranking, the more traffic a website will generate. <http://web.archive.org/web/20061107111225>
10 <http://internetadvancement.com>, defendants’ website, November 7, 2006. Defendants’ search
11 engine optimization service purports to guarantee top twenty-five rankings on major search
12 engines such as Yahoo, Google and AOL. Id. In return for payments varying from \$999.00 to
13 \$3,000.00 in “set-up” fees, in addition to a monthly fee of \$149.00, they offer a variety of
14 search engine optimization packages for their clients. These packages include but are not
15 limited to ongoing submission to major search engines; researching clients’ products, markets
16 and competition; researching and advising clients about the use and relevance of key words;
17 and providing ranking reports to clients. <http://www.internetadvancement.com/services.php>,
18 defendants’ website, October 1, 2007.

19 On August 11, 2004, the State of Washington acting through the Office of the Attorney
20 General, filed a lawsuit against defendants for violations of the Consumer Protection Act,
21 RCW 19.86 *et seq.* and the Unsolicited Electronic Mail Act, RCW 19.190, *et seq.* The
22 Complaint alleged that numerous aspects of defendants’ Internet search engine optimization
23 business constituted unfair and deceptive practices. Specifically, the State alleged that
24 defendants made numerous misrepresentations in the context of their marketing and sale of
25 search engine optimization services; failed to honor guarantees and refunds as contractually
26 promised; made unauthorized charges to consumer credit cards; failed to provide contractually

1 required ranking reports; unfairly structured the terms of cancellation; and provided poor
2 customer service. The original lawsuit by the Attorney General was spurred by the receipt of
3 over 100 consumer complaints received by the Federal Trade Commission, the Better Business
4 Bureau, and the Attorney General's Office.

5 After protracted negotiations with defendants, the lawsuit was settled with a Stipulated
6 Judgment. A number of injunctive provisions were ordered as part of the Judgment. These
7 injunctions, described under the section entitled "Judgment and Decree," *See* Exhibit 1, pp. 9-
8 13, list several prohibited practices including but not limited to making misrepresentations,
9 failing to disclose all material contract terms, making improper money-back offers, failing to
10 respond promptly to consumer requests, failing to cancel consumer accounts, improperly
11 billing and charging consumer accounts, and failing to grant refunds. Pursuant to the terms of
12 the Stipulated Judgment, the Court retained jurisdiction over the parties "for the purpose of
13 enabling any party to this Decree to apply to the Court at any time for the enforcement of
14 compliance therewith, the punishment of violations thereof, or the modification or clarification
15 thereof." *See* Exhibit 1, p.15, Paragraph 6.3.

16 Since entry of the Stipulated Judgment, defendants have consistently continued to
17 engage in the unlawful acts which gave rise to the original lawsuit. The frequency of
18 complaints has remained regular and consistent. From October 28, 2004 through August 1,
19 2007, the Attorney General's Office received 60 consumer complaints against defendants,
20 which reference practices that occurred after entry of the Stipulated Judgment. *See* Exhibit 2,
21 Matrix of Complaints, and Exhibit 4, Declaration of MaryBeth Haggerty-Shaw. These
22 complaints allege the same practices alleged in the State's original Complaint. Defendants
23 have systematically ignored the provisions of the Stipulated Judgment, and have repeatedly
24 violated its terms. Accordingly, plaintiff, State of Washington, now seeks enforcement of the
25 terms of the Stipulated Judgment and requests that the Court unsuspend the civil penalties of
26 \$25,000.00 that were suspended upon condition of compliance with the terms of the Stipulated

1 Judgment, impose additional civil penalties pursuant to RCW 19.86.140, and award the costs
2 and fees resulting from plaintiff's enforcement action.

3 **II. DEFENDANTS HAVE VIOLATED THE EXPRESS TERMS OF THE**
4 **STIPULATED JUDGMENT**

5 **A. Defendants have consistently made misrepresentations in the context of their sale,**
6 **advertising and delivery of services.**

7 In repeated instances, defendants have made misrepresentations in the context of the
8 sale, advertising and delivery of services. Specifically, defendants have misrepresented their
9 ability to provide top search engine rankings; their use of key words and phrases; their ability
10 to increase traffic and profits for consumers' websites; and the existence and nature of
11 consumer complaints filed against their company. In total, 39 consumer complaints received
12 by the Attorney General's office report misrepresentations that occurred after entry of the
13 Stipulated Judgment.¹ See Exhibit 2, Matrix of Complaints, and Exhibit 4, Declaration of
14 MaryBeth Haggerty-Shaw. These misrepresentations violate Paragraph 4.6(a) of the Stipulated
15 Judgment, which prohibits defendants from "making any misrepresentations in the context of
16 their sale, advertising or delivery of services." See Exhibit 1, p. 9, Paragraph 4.6(a).
17
18

19 ¹ See Exhibit 10, Complaint of Charlene Harrison; Exhibit 14, Complaint of Arlis Billie Call; Exhibit 7,
20 Complaint of Dale K. Tibbs; Exhibit 8, Complaint of Keith Marshall; Exhibit 22, Complaint of Richard Monroe;
21 Exhibit 20, Complaint of Lorna Hope Pfluke; Exhibit 25, Complaint of Kevin Paul Roth; Exhibit 12, Complaint
22 of Antoinette Royster; Exhibit 32, Complaint of Janice White; Exhibit 6, Complaint of Neil V. Brown; Exhibit 21,
23 Complaint of Geoff Ferdon; Exhibit 26, Complaint of Catherine Kleinsmith; Exhibit 27, Complaint of Noah
24 Rollin Varness; Exhibit 11, Complaint of Natasha Fix; Exhibit 13, Complaint of Fred Koster; Exhibit 9,
25 Complaint of Rebecca Ledogar; Exhibit 28, Complaint of Claudia Naragon; Exhibit 18, Complaint of Peter R.
26 Zacarelli; Exhibit 33, Complaint of Anthony V. Banister; Exhibit 34, Complaint of Gary Wayne Shue; Exhibit 17,
Complaint of Sheree Martinez; Exhibit 15, Complaint of Jim LeVan; Exhibit 16, Complaint of Kelly S. Wagoner;
Exhibit 41, Complaint of Charlene Avalos; Exhibit 42, Complaint of Carole R. Beins; Exhibit 43, Complaint of
George Borowski; Exhibit 44, Complaint of Robert Bruce; Exhibit 45, Complaint of Paul Crenshaw; Exhibit 46,
Complaint of Christine K. Floravanti; Exhibit 47, Complaint of Dan Golden; Exhibit 48, Complaint of Arthur J.
Kingdom; Exhibit 49, Complaint of David M. Klein; Exhibit 50, Complaint of Jan Knittle; Exhibit 51, Complaint
of Kurt E. Malerich; Exhibit 52, Complaint of Bonnie Spring; Exhibit 53, Complaint of Martha A. Stott; Exhibit
54, Complaint of Bruce France and Exhibit 55, Complaint of Tammy McArdle.

1 **1. Defendants made misrepresentations regarding their ability to provide top**
2 **search engine rankings.**

3 Defendants have repeatedly misrepresented their ability to provide top search engine
4 rankings. Defendants promise consumers that they will generate high placement in major
5 search engines, such as top-twenty, top-ten, and even number-one rankings. However,
6 consumers overwhelmingly report that they see no improvement in their website rankings.

7 For instance, consumer Peter Zacarelli reported that “After several months not only did
8 my business website not get higher placement or rankings, but it dropped entirely off the
9 engine searches.” See Exhibit 18, Complaint of Peter Zacarelli. In total, 24 consumer
10 complaints received by the Attorney General’s office since October 28, 2004 report that
11 defendants did not achieve the promised website rankings.²

12 **2. Defendants made misrepresentations regarding their use of key words and**
13 **phrases.**

14 Typically, search engine optimization services agree to achieve high search engine
15 rankings for only certain specified key words or phrases. For example, a website that sells
16 mugs may contract with a search engine optimization service to improve its rankings for the
17 key word “mug” and also for the key phrase “red sixteen ounce coffee mug.” If the
18 optimization is successful, then typing the key word “mug” or key phrase “red sixteen ounce
19 coffee mug” into the search engine will yield search results that include the mug website.
20 However, typing in other words or phrases, such as “blue hot chocolate mug” or “coffee cup”

21 ² See Exhibit 17, Complaint of Sheree Martinez; Exhibit 7, Complaint of Dale K. Tibbs; Exhibit 20,
22 Complaint of Lorna Hope Pfluke; Exhibit 25, Complaint of Kevin Paul Roth; Exhibit 6, Complaint of Neil V.
23 Brown; Exhibit 21, Complaint of Geoff Ferdon; Exhibit 26, Complaint of Catherine Kleinsmith; Exhibit 28,
24 Complaint of Noah Rollin Varness; Exhibit 12, Complaint of Natasha Fix; Exhibit 30, Complaint of Claudia
25 Naragon; Exhibit 18, Complaint of Peter Zacarelli; Exhibit 15, Complaint of Jim LeVan; Exhibit 16, Complaint of
26 Kelly S. Wagoner; Exhibit 34, Complaint of Gary Wayne Shue; Exhibit 51, Complaint of Kurt R. Malerich;
Exhibit 42, Complaint of Carole Beins; Exhibit 43, Complaint of George Borowski, Exhibit 45, Complaint of Paul
Crenshaw, Exhibit 47, Complaint of Dan Golden; Exhibit 48, Complaint of Arthur Kingdom; Exhibit 49,
Complaint of David Klein; Exhibit 52, Complaint of Bonnie Spring; Exhibit 54, Complaint of Bruce France;
Exhibit 53, Complaint of Martha Stout and Exhibit 55, Complaint of Tammy McArdle.

1 will not yield results that include the mug website, because the optimization service has not
2 situated the website to generate results for these key words and phrases.

3 Typically, it is difficult to generate results for popular key words and phrases. Because
4 so many web pages contain popular key words and key phrases, competition for search results
5 is extremely keen. For example, there might be over 5 million websites that contain the
6 keyword “mug” but only ten websites that contain the key phrase “red sixteen ounce coffee
7 mug.” As a result, generating top search engine results for the word “mug” would require that
8 one website beat out 5 million others. However, generating top search engine results for the
9 phrase “red sixteen ounce coffee mug” would involve little or no effort, because all ten
10 websites in this key word category are already ranked.

11 Defendants guarantee that the “Client will obtain at least a top ten placement on one or
12 more of Client’s ‘Key Words’ or ‘Key Word Phrases.’” See Exhibit 3, Terms and Conditions,
13 Paragraph 3.1. On several occasions, defendants told consumers that they would generate high
14 rankings for certain agreed-upon key words; but when consumers later received ranking
15 reports, they discovered that defendants used different key words and phrases.³ These different
16 key words and phrases were sometimes irrelevant to the consumers’ websites and therefore
17 drew visits from users who were not interested in purchasing the websites’ products. In other
18 instances, these key words and phrases were so unusual, that extremely few users entered these
19 words into search engines, causing visits to consumer websites to decline. Consumers
20 frequently claimed that they received fewer visits, or that their visits stopped after contracting
21 with defendants.⁴ Ultimately, the result of defendants’ misrepresentations was that consumers’
22 websites gained higher rankings but fewer visits from interested customers.

23
24 ³ See Exhibit 89, Complaint of Keith Marshall; Exhibit 9, Complaint of Rebecca Ledogar; Exhibit 11,
Complaint of Natasha Fix; Exhibit 42, Complaint of Carole R. Beins; Exhibit 49, Complaint of David M. Klein;
25 and Exhibit 50, Complaint of Jan Knittle.

26 ⁴ See Exhibit 10, Complaint of Charlene Harrison; Exhibit 6, Complaint of Neil V. Brown; Exhibit 7,
Complaint of Dale K. Tibbs; Exhibit 22; Complaint of Richard Monroe; Exhibit 18, Complaint of Peter Zacarelli;

1 For example, Keith Marshall explained that defendants “used key words that I don’t
2 have on my site.” The key words and phrases chosen by defendants were terms that had very
3 few if anyone typing these terms in. With this they could get the top ranking that they
4 promised, but these words were not relevant to the site. See Exhibit 8, Complaint of Keith
5 Marshall. Mr. Marshall called defendants and requested them to change the key words in order
6 to make them an accurate reflection of his website, but defendants refused, claiming that they
7 could not get good rankings if they used other key words. *Id.*

8 **3. Defendants made misrepresentations regarding their ability to increase**
9 **traffic and profits for consumers’ websites.**

10 Defendants misrepresented their ability to increase traffic and profits for consumer
11 websites.⁵ In many instances, after consumers purchase defendants’ services, both website
12 visits and profits fail to improve. In fact, many consumers report that visits dramatically
13 decrease.

14 For example, defendants’ telemarketing sales representative, Kevin, called Charlene
15 Harrison in September 2005 and promised her that if she bought their service, she would get
16 more traffic on her website. However, shortly after signing the contract, Ms. Harrison stopped
17 getting visits: “I lost all the hits I was getting, and I never did get any more.” See Exhibit 10,
18 Complaint of Charlene Harrison. Defendants also promised more visits to Richard Monroe.
19 “The Internet Advancement sales pitch promised to increase the sales of our website by
20 increasing the number of hits to our site.” However, Mr. Monroe reports that after hiring
21 defendants, he experienced a “major decrease in both visitors and sales.” See Exhibit 22,
22 Complaint of Richard Monroe.

23 Exhibit 35, Complaint of Robert S. Veinot; Exhibit 45, Complaint of Paul Crenshaw and Exhibit 9, Complaint of
24 Rebecca Ledogar.

25 ⁵ See Exhibit 10, Complaint of Charlene Harrison; Exhibit 7, Complaint of Dale K. Tibbs; Exhibit 22,
26 Complaint of Richard Monroe; Exhibit 11, Complaint of Natasha Fix; Exhibit 33, Complaint of Anthony V.
Banister; Exhibit 45, Complaint of Paul Crenshaw; Exhibit 49, Complaint of David M. Klein and Exhibit 55,
Complaint of Tammy McArdle.

1 **4. Defendants made misrepresentations regarding consumer complaints.**

2 Defendants misrepresented the existence and nature of consumer complaints filed
3 against their company. Several consumers complained that when they were solicited by
4 defendants, they represented themselves to be in good standing with the Better Business
5 Bureau and the Attorney General's Office, when in fact they were not.⁶ For example, when
6 consumer Antoinette Royster asked defendants whether the company had any complaints with
7 the Better Business Bureau or any other agencies, defendant's sales representative, Kris, stated
8 "No, our company was incorporated in 2001, [has] been in business a total of seven years, with
9 over 4,000 clients...and *with no complaints.*" (Emphasis added). See Exhibit 12, Complaint of
10 Antoinette Royster. In fact, the Better Business Bureau, the Attorney General's Office, and the
11 Federal Trade Commission have received well over one hundred complaints regarding
12 defendants' unfair and deceptive business practices. Similarly, when consumer Fred Koster
13 asked defendants about complaints listed on the Better Business Bureau website, they
14 suggested that the website was inaccurate, because the Better Business Bureau had not updated
15 their records. See Exhibit 13, Complaint of Fred Koster.

16 **B. Defendants have failed to disclose, clearly and conspicuously, all material contract**
17 **terms before prospective customers have agreed to be charged for any of**
18 **defendants' services and have misrepresented the terms of their written contracts**
19 **in oral statements.**

20 Defendants' telemarketing sales representatives cold-call prospective customers and
21 coax them into purchasing defendants' services by selectively highlighting favorable portions
22 of their written contract and misrepresenting its other unfavorable portions. In several
23 instances, sales representatives have blatantly misrepresented terms of the written contract,
24 failed to mention its material provisions, misrepresented the obligations of consumers, and
25 made promises which exceed its written terms. Consumers have signed contracts solely based

26 ⁶ See Exhibit 14, Complaint of Arlis Billie Call; Exhibit 20, Complaint of Lorna Hope Pfluke; Exhibit 12,
Complaint of Antoinette Royster; Exhibit 13, Complaint of Fred Koster; Exhibit 7 Complaint of Dale K. Tibbs;
Exhibit 11, Complaint of Natasha Fix and Exhibit 6, Complaint of Neil Brown.

1 on salespersons' verbal representations, only to later discover that the written contract
2 provisions differ substantially from the verbal representations. These practices violate
3 Paragraphs 4.6(c), 4.6(i), 4.6(b) and 4.6(p) of the Stipulated Judgment, which respectively
4 prohibit defendants from "failing to disclose, clearly and conspicuously, all material contract
5 terms before prospective customers have agreed to be charged for any of defendants' services,"
6 from "failing to clearly, conspicuously, and unambiguously disclose all material terms in their
7 contract," from "misrepresenting the contractual obligations of customers or prospective
8 customers," and from "misrepresenting the terms of their written contract in oral statements,
9 advertising, or through other means." See Exhibit 1; p.9, Paragraph 4.6(c); p.12, Paragraph
10 4.6(i); p.9, Paragraph 4.6(b); p.13, Paragraph 4.6(p).

11 For example, defendants' salesperson, Kevin, contacted Charlene Harrison in
12 September 2005 and guaranteed that he could position her website on the first page of Google
13 and generate more traffic for her website. Additionally, Kevin promised Ms. Harrison that if
14 she was not satisfied for any reason, she could get a full refund at any time, with no conditions.
15 Ms. Harrison confirmed with Kevin: "I can get my money back any time, if I see it is not
16 working, or change my mind?" Kevin replied, "Yes." See Exhibit 10, Complaint of Charlene
17 Harrison. These verbal representations both concealed and patently misrepresented particular
18 material terms of the written contract. For example, the contract only guaranteed a top-twenty
19 placement on any four of fifteen major search engines within 108 days; it did not guarantee to
20 put Ms. Harrison's website on the first page of Google. Also, the contract contained a
21 disclaimer regarding traffic: "We cannot warrant that someone will click on your site,"
22 contrary to Kevin's guarantee to generate more traffic for Ms. Harrison's website. Finally, the
23 contract only guaranteed a 50% refund if the website was not placed in the top-twenty
24 positions of at least four major search engines in 108 days contrary to Kevin's guarantee of a
25 full unconditional refund at any time if Ms. Harrison was not satisfied. See Exhibit 10,
26 Contract of Charlene Harrison.