

1 Terry Goddard
2 Attorney General
(Firm State Bar No. 14000)

3 Cherie L. Howe (Bar No. 13878)
4 Assistant Attorney General
Consumer Protection & Advocacy
1275 West Washington Street
5 Phoenix, Arizona 85007-2997
Telephone: (602) 542-7725
6 Facsimile: (602) 542-4377
Consumer@azag.gov
7 Attorneys for the State of Arizona

8 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
9 **IN AND FOR THE COUNTY OF MARICOPA**

10 In re DIRECTORY BILLING, LLC, a
11 Florida Limited Liability Company
d/b/a Directory Billing and d/b/a
12 USDirectory.com,

13 Respondent.

Case No: _____

ASSURANCE OF DISCONTINUANCE

14
15 1.

16 DIRECTORY BILLING, LLC, a Florida Limited Liability Company d/b/a DIRECTORY
17 BILLING and d/b/a USDIRECTORY.COM, does business in Arizona and is the Respondent
18 herein. The Respondent solicited customers for internet yellow page advertising through
19 distribution of activation checks that when cashed by the recipient allegedly created a
20 contractual relationship to purchase advertising. This Assurance of Discontinuance
21 (“Assurance”) is between the Respondent and the Attorney General of the State of Arizona
22 (“State”) acting pursuant to Arizona Revised Statutes (“A.R.S.”)
23 § 44-1530, a provision of the Arizona Consumer Fraud Act.

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1 for the amount set out herein must be represented by Respondent's counsel to have been mailed
2 to the Florida Attorney General's office. Respondent and the State agree that the terms of this
3 Assurance apply only to the Respondent and the State. The terms of this Assurance track those
4 of the other 25 Settling States some of whom are entering into Consent Judgments and others
5 entering Assurances of Voluntary Compliance which Judgments and Assurances are similar to
6 each other and to this Assurance of Discontinuance.

7 8.

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

13 **DEFINITIONS**

14 9.

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

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

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

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

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

14 “Effective Date” means the 20th of February 2008.

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

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

24 “The Settling States” are: Alaska, Arizona, Arkansas, California, Connecticut, Delaware,
25 Florida, Idaho, Illinois, Louisiana, Massachusetts, Michigan, Minnesota, Mississippi, Missouri,
26 Montana, Nebraska, New Hampshire, North Carolina, North Dakota, Oregon, Pennsylvania,

1 South Carolina, Tennessee, Texas, and West Virginia.

2 "The State" means the Attorney General of the State of Arizona.

3 **INJUNCTIVE TERMS**

4 10.

5 A. Promotional Practices

6 Termination of Use of Activation Checks. In connection with the advertisement, offer
7 for sale or sale of goods or services, the Respondent shall not, directly or indirectly, send to
8 individuals, businesses, churches, institutions, governmental agencies or other organizations any
9 solicitation that contains an Activation Check. Respondent shall obey the Arizona Consumer
10 Fraud Act, A.R.S. § 44-1521 et seq.

11 B. Notification of Current Activation Check Customers

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

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

25 B) Customer Service. The Respondent shall ensure that the telephone number
26 reflected on Exhibit "A" as a "customer service" number is the same "customer service"

1 number used in other contexts by the Respondent, so as to ensure that recipients of
2 Exhibit "A" might also locate that "customer service" number through Directory Billing,
3 LLC and other correspondence or communications between them and the Respondent.
4 The "customer service" number shall be manned during regular business hours so that a
5 recipient calling in response to Exhibit "A" may speak to a representative of the
6 Respondent, following no more than one automated menu option.

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

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

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.

5. Cancellation of Account and Limitation on Collection Efforts. If a Current Activation Check Customer requests cancellation in response to the notice attached here to as Exhibit A, or if any prior Activation Check Customer had requested cancellation prior to the filing of this Assurance, then Respondent shall immediately cancel the customer's account with the Respondent and permanently cease billing the customer for services under the account. Additionally, the Respondent 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, the Respondent shall provide to the State a record in electronic form (e.g., Microsoft Excel or other compatible database) itemizing all customers that 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 the Respondent, and the date that payment was mailed.

MONETARY PROVISIONS

11.

A. Payment The Settling States shall recover and the Respondent shall pay the amount of FOUR HUNDRED THOUSAND DOLLARS (\$400,000.00). Such monies shall be paid by the Respondent to the Attorney General of the State of Florida on behalf of the Settling States upon the Respondent signing this Assurance.

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 Respondent 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.

1 Notwithstanding the immediately preceding sentence, subject to their respective state laws and
2 policies, the States may use those funds not applied to their restitution programs for any purpose
3 provided by state law, including for placement in or application to, a consumer education,
4 litigation, or local consumer aid fund or revolving fund, or for other uses to defray the costs of
5 the litigations and investigations leading to this Assurance, as permitted by the laws of the State.

6 **RECORDS AND COMPLIANCE**

7 12.

8 A. Provision of Records.

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

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

24 3. Former Activation Check Customer Records Respondent shall provide, within
25 twenty (20) business days of receipt of any request from one of the Settling States, a list of all
26 Activation Check Customers who are no longer customers of the Respondent. The list shall

1 state the former customer's full name, address, telephone number, account number, the dates
2 during which the customer's account was open, the total amount paid by the customer to
3 Respondent since January 1, 2004, and any amount that was refunded, reimbursed or credited
4 against those amounts paid prior to the Effective Date of this Assurance (i.e., any set-off
5 asserted by Respondent). Respondent will accept such requests from a Settling State by e-mail,
6 telefax or telephone, in addition to mail.

7 B. Availability of Records.

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

19 **GENERAL AND ADMINISTRATIVE PROVISIONS**

20 13.

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

1 parties may jointly agree to a modification only by a written instrument signed by or on behalf
2 of both the State and the Respondent.

3 Any party to this Assurance may petition the Court for modification on thirty (30) day
4 notice to all other parties to this Assurance. If Respondent wishes to seek a stipulation for a
5 modification from the State, it shall send a written request for agreement to such modification to
6 the Attorney General of the State at least thirty (30) days prior to filing a motion with the Court
7 for such modification.

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

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

23 3. Release of Claims. The State acknowledges by its execution hereof that this
24 Assurance constitutes a complete settlement and release of all civil claims on behalf of the State
25 against the Respondent and all of its officers, directors, members, employees, agents, attorneys,
26 servants, representatives, and their successors and assigns (all such released parties shall be

collectively referred to as the "Releasees"), with respect to all claims and causes of action that were asserted or that could have been asserted prior to the Effective Date under the above-cited consumer protection statutes and that 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 upon the above-cited consumer protection statutes against the Releasee (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 Releasee prior to the Effective Date.

Notwithstanding the foregoing, the State may institute an action or proceeding to enforce the terms and provisions of this Assurance or to take action based on future conduct by the Releasees. The Respondent acknowledges that a violation of this Assurance 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 Assurance, or from pursuing any law enforcement action with respect to the acts or practices of the Respondent not covered by this Assurance or any acts or practices conducted after the Effective Date of this Assurance.

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

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

7. Past and Future Practices. Nothing herein constitutes approval by the State of the

Respondent's past or future practices. The Respondent 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 the Respondent with respect to the acts and practices covered by this Assurance.

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

CONSENT TO ASSURANCE

14.

1. The Respondent acknowledges that it has read the foregoing Assurance.

2. The Respondent consents to the filing of this Assurance.

3. The Respondent states that no promise of any kind or nature whatsoever (other than the written terms of this Assurance) was made to it to induce it to enter into this Assurance, that it has entered into this Assurance voluntarily, and that this Assurance constitutes the entire agreement between the Respondent and the State.

4. Frederick Middleton represents that he is the Managing Member of Directory Billing, LLC, and that, as such, has been authorized by Directory Billing, LLC to enter into this Assurance for and on behalf of all entities bound by this Assurance.

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1 Signed this _____ day of _____, 2008.

2 DIRECTORY BILLING, LLC.
3 a Florida Limited Liability Corporation,

4 _____
By: FREDERICK MIDDLETON, Managing Member

5 STATE OF FLORIDA
6 COUNTY OF _____

7 BEFORE ME, a notary public of the State of Florida appeared Frederick Middleton, who
8 swore under oath that he is the Managing Member of Directory Billing, LLC and who is
9 either(Check One)_____known to me or who_____produced the following
10 identification:_____.

11 _____
NOTARY PUBLIC
AFFIX NOTARY SEAL

12 Approved as to form this _____ day of _____, 2008.
13 Counsel for the Respondent

14 _____
ALFRED BENNINGTON, ESQ.

15 Shutts & Bowen, Llp
16 300 South Orange Ave.
Suite 1000
17 P.O. Box 4956
Orlando, FL 32802
18 (407) 835-6755
Fla. Bar No. 404985

19
20 Approved as to form this _____ day of _____, 2008.
21 Counsel for the State

22 _____
23 TERRY GODDARD
Attorney General of the State of Arizona
24 By: Cherie L. Howe
Assistant Attorney General

1 EXHIBIT A

2 Notice of Important Legal Rights

3 <Company Name>

4 <Address>

5 <City>, <State> <Zip>

6 ACCOUNT: <Account ID>

7 Dear Customer:

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

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

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

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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.

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

3
4 _____
Signature of Authorized Individual

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

8 <Company Name> _____

9 <Address> _____

10 <City>, <State> <Zip> _____

11 <Account ID> _____

12 DEADLINE NOTICE:

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

Envelope

PDX_DOCS:407029.1
01/31/08 11:44 AM

Settlement With <STATE> ATTORNEY GENERAL
Directory Billing, LLC.
USdirectory.com

NOTICE OF IMPORTANT LEGAL RIGHTS
(Settlement Notice)

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