



STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

STATE OF WASHINGTON,

Plaintiff,

v.

VISIBLE.NET, a Washington corporation also doing business as Web Marketing Source, WebMarketingSource.com, Captures.com, Captures.com, Inc. and Webmarketingsource.com, Inc; CAPTURES.COM, INC., a Washington corporation; and GILBERT WALKER, individually and on behalf of his marital community and as the Owner, Officer and Director of Captures.com, Inc. and Visible.net,

Defendants.

NO. 08 - 2 - 38947 - 2 SEA
COMPLAINT FOR INJUNCTIVE
AND OTHER RELIEF

COMES NOW, Plaintiff, State of Washington, by and through its attorneys Robert McKenna Attorney General; and Paula Selis, Senior Counsel, and brings this action against defendants named herein. The state alleges the following on information and belief:

I. JURISDICTION AND VENUE

1.1 This Complaint is filed and these proceedings are instituted under the provisions of RCW 19.86, the Unfair Business Practices--Consumer Protection Act, and RCW 19.158, the

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1 Commercial Telephone Solicitation Act.

2 1.2 Jurisdiction of the Attorney General to commence this action is conferred by
3 RCW 19.86.080.

4 1.3 The violations alleged herein have been and are being committed in whole or in
5 part in King County, in the State of Washington by defendants named herein or their agents.

6 **II. DEFENDANTS**

7 2.1 Defendant Visible.net, also doing business Web Marketing Source,
8 WebMarketingSource.com, Caputures.com, Captures.com, Inc. and Webmarketingsource.com,
9 Inc., is a Washington for-profit corporation located at 14953 NE 95th St., Redmond,
10 Washington 98052.

11 2.2 Defendant Captures.com is a Washington for-profit corporation located at
12 14953 NE 95th St., Redmond, Washington 98052.

13 2.3 Defendant Gilbert Walker is the owner, officer and sole director of defendants
14 Visible.net and Captures.com, and as such, controls their policies, activities, and practices,
15 including those alleged in the Complaint herein. Defendant Gilbert resides at 13529 137th Pl.
16 NE, Kirkland, Washington 98034. Defendant Gilbert is married to Jane Doe Gilbert, and
17 together they constitute a marital community. All actions taken by defendant Gilbert as
18 alleged in the Complaint herein are for the benefit of his marital community.

19 **III. NATURE OF TRADE OR COMMERCE**

20 3.1 Defendants advertise and sell a variety of marketing services to Internet-based
21 businesses across the United States including website design, website hosting, sitemaps and
22 search engine optimization. They advertise their services on their websites,
23 www.captures.com and www.visible.net, and also through unsolicited telemarketing.

24 3.2 Businesses which market and sell their products over the Internet often rely on
25 search engines (“SEO’s”) and other marketing mechanisms to lead potential customers to their
26 websites. Defendants offer website design and marketing services which purport to help their

1 clients achieve “improved rankings, popularity, authority and brand recognition online.”
2 <http://visible.net/services/marketing> October 21, 2008. As an initial “setup” fee, they charge
3 between \$3749.99 for their least expensive “Novice” package of services, to \$9749.99 for their
4 most expensive “Expert” service package. In addition to the “setup” fee, Defendants charge a
5 recurring monthly fee which has ranged from \$39.90 to \$99.99. Defendants claim their
6 services “come complete with the features and tools needed in order to jump start, maintain
7 and sustain an advanced, results driven search engine marketing and optimization campaign.”
8 Id. Their website states: “We use a team of in house developers and ecommerce store
9 designers to put each aspect of your ecommerce store together for you quickly and easily with
10 no hassle. We get our clients up and running within just a few weeks including colors, logo,
11 icons, graphics and many tools to help you manage your products. These processes could take
12 you or other designers months to complete, but with Captures there is no need to wait in order
13 for you to start selling online. Sign up today, you may have orders by tomorrow!”
14 http://www.captures.com/ecommerce_packages/ecommerce_packages.shtml#software,
15 October 21, 2008.

16 3.3 Many of defendants’ clients are small business owners who rely on them to
17 provide software, technical support and advice in order to operate their websites. Defendants
18 specifically market their services to appeal to these online merchants who do not necessarily
19 have the expertise to perform their own website marketing: “The Visible.net ecommerce
20 software comes complete with everything a new or existing merchant needs to design, create,
21 configure, customize, open, manage and market their online store. Each aspect of our platform
22 is designed to make any process on the backend administrative dashboard as simple as possible
23 to understand. We make it easy for users of different skill levels to comprehend and feel
24 comfortable using our software or tools.” <http://www.visible.net/services/ecommerce/>, October
25 21, 2008. “Our advanced, feature rich and flexible ecommerce software comes complete with
26 everything needed to become a successful merchant, no matter how long you've been selling

1 online.” <http://www.visible.net/services/>, October 6, 2008. By way of continuing technical
2 support, defendants promise “the best customer service available,” with each customer
3 “assigned a specific technician” who “will be happy to answer the phone any time you call.”
4 [http://www.youtube.com/watch?v=DiPITNqSVLY&feature=Playlist&p=D36AE971B2EF982](http://www.youtube.com/watch?v=DiPITNqSVLY&feature=Playlist&p=D36AE971B2EF9825&index=0;)
5 [5&index=0; http://www.visible.net/visiblog/marketingseo-services-introduction-video-by-](http://www.visible.net/visiblog/marketingseo-services-introduction-video-by-visible.net/)
6 [visiblenet/](http://www.visible.net/visiblog/marketingseo-services-introduction-video-by-visible.net/), October 6, 2008.

7 **3.4** Defendants are in competition with others in the State of Washington engaged
8 in similar business.

9 **IV. FIRST CAUSE OF ACTION – MISREPRESENTATIONS**

10 **4.1.** Plaintiff realleges Paragraphs 2.1 through 3.5 and incorporates them herein as if
11 set forth in full.

12 **4.2** In the context of defendants’ marketing and sale of services, defendants make
13 numerous misrepresentations, including but not limited to the following:

- 14 a. Defendants represent that they are able to significantly increase traffic to their
15 customers’ websites by achieving top search engine rankings. In fact, in many
16 instances, they are unable to do so.
- 17 b. Defendants represent that their customers will obtain increased sales by using
18 defendants’ services, for example stating that they will have “more business than
19 they can handle,” that they will be making money within “60 to 90 days,” and that
20 they will have a “hard time keeping up with Internet orders.” In fact, in many
21 instances, defendants’ services do not result in increased sales.
- 22 c. Defendants represent that they are affiliated with other marketers in order to sell
23 services to prospective customers. For example, defendants have represented that
24 they are affiliated with Specialty Merchandise Company (“SMC”), a so-called
25 “drop-ship wholesaler.” SMC is a “membership program” whereby
26

1 member/resellers pay a monthly fee for the right to advertise and sell products that
2 SMC directly ships (i.e., "drop ships") to their members' customers. Some of
3 SMC's members sell its products over the Internet through their own websites.
4 Defendants have directly solicited these members, claiming that they are affiliated
5 with the company. A number of consumers have agreed to purchase defendants'
6 services in the mistaken belief that they are, in fact, affiliated with SMC. In fact,
7 defendants are not affiliated with SMC or the other marketers with whom they have
8 represented affiliations.

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10 d. Defendants represent that consumers who contract for their services will be able to
11 speak to customer service representatives and obtain support "any time" the
12 consumer calls. Id. They state that their "technicians and support staff are
13 available and ready to service you, no matter what the reason," and that the
14 consumer can "rest assured," there is "no question too big or too small that we
15 won't take the time necessary to provide you with the answers you need."
16 <http://www.visible.net/services/>, October 6, 2208. In fact, in many instances,
17 consumers are unable to reach defendants' representatives and despite leaving
18 messages, do not receive return calls.

19 e. In some instances, defendants represent that consumers may obtain refunds for
20 defendants' services after a certain period of time if they are not satisfied. In other
21 instances, they are told that they have ten days to cancel after the sale. In fact,
22 when consumers ask for refunds or attempt to cancel, defendants have refused.

23 f. Defendants represent that they will complete consumers' web designs in thirty to
24 sixty days. In fact, in many instances, defendants fail to do so.
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1 g. In some instances, defendants represent that as part of their services, they will
2 provide bi-monthly reports detailing the status of their clients' websites in the major
3 search engines. In fact, in some instances, the reports are not provided.

4 4.3 The conduct described above constitutes unfair or deceptive acts or practices in
5 trade or commerce and unfair methods of competition in violation of RCW 19.86.020.
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7 **V. SECOND CAUSE OF ACTION – FAILURE TO DELIVER**

8 5.1. Plaintiff realleges paragraphs 2.1 through 4.3 and incorporates them as if set
9 forth herein in full.

10 5.2 Defendants obtain a significant up-front fee from consumers for thousands of
11 dollars in order to provide website development and marketing services. They promise
12 consumers delivery of a fully operable website and/or a package of marketing services. In
13 many instances, defendants fail to deliver the promised services.

14 5.3 The conduct described above constitutes unfair or deceptive acts or practices in
15 trade or commerce and unfair methods of competition in violation of RCW 19.86.020.
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17 **VI. THIRD CAUSE OF ACTION – UNAUTHORIZED CHARGES**

18 6.1. Plaintiff realleges paragraphs 2.1 through 5.3 and incorporates them as if set
19 forth herein in full.

20 6.2 Defendants' payment program provides for automatic monthly charges to
21 customers' credit cards for the duration of their contracts. When consumers contact defendants
22 and attempt to cancel, they indicate explicitly they no longer wish to pay for or receive
23 defendants' services. Despite conveying their intent to cancel, the consumers continue to
24 receive unauthorized charges on their credit cards.
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1 to the statute, “doing business” includes both “commercial telephone solicitation from a
2 location in Washington State and solicitation of purchasers located in Washington.” RCW
3 19.158.050(1). Defendants are not registered as a commercial telephone solicitor with the
4 Department of Licensing.

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6 **8.4** Defendants’ failure to register as a commercial telephone solicitor constitutes
7 violations of RCW 19.158.050(1) and RCW 19.158.050(4)(a) and, pursuant to RCW
8 19.158.030, also constitutes per se violations of RCW 19.86, the Consumer Protection Act.

9 **IX. SIXTH CAUSE OF ACTION—FAILURE TO PROVIDE WRITTEN**
10 **CONFIRMATION IN VIOLATION OF THE TELEPHONE SOLICITATION ACT**

11 **9.1** Plaintiff realleges paragraphs 2.1 through 8.4 and incorporates them as if set
12 forth herein in full.

13 **9.2** In the context of defendants’ sales as a commercial telephone solicitor, they
14 enter into contracts with consumers for the sale of website design, website hosting and
15 marketing services. During the course of a telephone sale, they obtain the consumer’s
16 agreement to purchase services as well as the credit card number the consumer will use for
17 payment. They then proceed to bill the consumer.

18 **9.3** RCW 19.158.110(4) requires that, if a sale or an agreement to purchase is
19 completed, a commercial telephone solicitor must inform the purchaser of his or her
20 cancellation rights as described in the Commercial Telephone Solicitation Act, RCW 19.158 et
21 seq., and must furthermore state the solicitor’s registration number as issued by the Department
22 of Licensing. These cancellation rights include the consumer’s right to cancel his or her
23 purchase within three days of receiving written confirmation of the sale and, in the event the
24 Act has been violated, the consumer’s right to void the sale at any time. RCW 19.158.120,
25 RCW 19.158.120(3). Defendants fail to orally inform consumers of these cancellation rights
26 as required by RCW 19.158.110 or include them in a written confirmation of sale as provided

1 by RCW 19.158.120. Furthermore, they fail to state their Department of Licensing registration
2 number.

3 9.4 Defendants' failure to orally inform consumers of their cancellation rights or
4 their registration number constitutes a violation of RCW 19.158.110(4) and, pursuant to RCW
5 19.158.030, also constitutes a per se violation of RCW 19.86, the Consumer Protection Act.

6 **X. SEVENTH CAUSE OF ACTION—FAILURE TO VOID CONTRACTS IN**
7 **VIOLATION OF THE COMMERCIAL TELEPHONE SOLICITATION ACT**

8 10.1 Plaintiff realleges paragraphs 2.1 through 9.4 and incorporates them as if set
9 forth herein in full.

10 10.2 Consumers who have purchased services through defendants' telephone sales
11 have, in some instance, sought to cancel their purchases and obtain refunds.

12 10.3 Pursuant to RCW 19.158.120(3), if a commercial telephone solicitor violates
13 the Commercial Telephone Solicitation Act in making a sale, the purchaser's contract is
14 voidable "by giving written notice to the seller." Defendants violate the Commercial
15 Telephone Solicitation Act in at least two ways: by failing to register, in violation of RCW
16 19.158.050(1) and (4); and by failing to orally inform consumers of their cancellation rights, in
17 violation of RCW 19.158.110(4). Because of these violations, consumers may void their
18 contracts with defendants. Despite the fact that defendants' contracts are voidable by law,
19 when consumers attempt to void them, defendants refuse to do so, and continue to charge the
20 consumers for services.

21 10.4 Defendants' failure to void contracts for sales made in violation of RCW
22 19.158 constitutes a violation of RCW 19.158.120(3), and, pursuant to RCW 19.158.030, also
23 constitutes a per se violation of RCW 19.86, the Consumer Protection Act.

1 **XI. PRAYER FOR RELIEF**

2 **WHEREFORE**, plaintiff, **STATE OF WASHINGTON**, prays for relief as follows:

3 **11.1** That the Court adjudge and decree that defendants have engaged in the conduct
4 complained of herein.

5 **11.2** That the Court adjudge and decree that the conduct complained of in Paragraphs
6 8.1 through 10.4 constitutes violations of RCW 19.158, the Commercial Telephone Solicitation
7 Act, and, pursuant to RCW 19.158.030, also constitutes per se violations of RCW 19.86, the
8 Consumer Protection Act.

9 **11.3** That the Court adjudge and decree that the conduct complained of in Paragraphs
10 4.1 through 10.4 constitutes unfair or deceptive acts or practices and unfair methods of
11 competition in violation of the Consumer Protection Act, Chapter 19.86 RCW.

12 **11.4** That the Court issue a permanent injunction enjoining and restraining defendants
13 and their representatives, successors, assigns, officers, agents, servants, employees, and all other
14 persons acting or claiming to act for, on behalf of, or in active concert or participation with
15 defendants from continuing or engaging in the unlawful conduct complained of herein.

16 **11.5** That the Court assess civil penalties, pursuant to RCW 19.86.140, of up to two
17 thousand dollars (\$2,000) per violation against the defendants for each and every violation of
18 RCW 19.86.020 caused by the conduct complained of herein.

19 **11.6** That the Court make such orders pursuant to RCW 19.86.080 as it deems
20 appropriate to provide for restitution to consumers of money or property acquired by defendants
21 as a result of the conduct complained of herein.

22 **11.7** That the Court make such orders pursuant to RCW 19.86.080 to provide that
23 plaintiff, State of Washington, have and recover from defendants the costs of this action, including
24 reasonable attorney's fees.

