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The Honorable Michael Hayden
Date of Hearing: March 19, 2010
Time of Hearing: 9:00 a.m.

KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

STATE OF WASHINGTON,

NO. 08-2-38947-2 SEA

Plaintiff,

ORDER GRANTING PLAINTIFF'S
MOTION FOR PARTIAL SUMMARY
JUDGMENT

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.

THIS MATTER having come before the Court on State's Motion for Partial Summary Judgment and the Court, having considered Plaintiff's Motion and attachments thereto, Defendants' Response and attachments thereto and Plaintiff's Reply and attachments thereto, and the oral argument of the parties, the Court ORDERS, ADJUDGES AND DECREES AS FOLLOWS:

1. Plaintiff's Motion for Partial Summary Judgment is hereby GRANTED in part and DENIED in part.

2. Defendants' sales representations regarding earning potential that include

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ORIGINAL

ATTORNEY GENERAL OF WASHINGTON
Consumer Protection Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7745

1 factual statements that are untrue, such as “Just like my last client, you will be blown away
2 when you can see what having atop search engine ranking can do for your business and your
3 pocketbook,” are unfair and deceptive, and constitute violations of the Consumer Protection
4 Act, RCW 19.86.020.

5 3. When Defendants registered with the Department of Licensing on
6 September 24, 2009 as a commercial telephone solicitor, they became obligated to comply
7 with the provisions of the Commercial Telephone Solicitation Act, RCW 19.158 et seq.
8 (“CTSA”). Registration as a commercial telephone solicitor obligates the registrant to comply
9 with the CTSA, even if such registration is believed to be voluntary by the registrant. As a
10 matter of public policy and in order to protect the public interest, the CTSA should be
11 construed to create such an obligation upon registration.

12 4. For the period of September 24, 2009 to the present, Defendants failed to
13 comply with the disclosure requirements of the Commercial Telephone Solicitation Act, in
14 particular, RCW 19.158.110(4) which requires that if a sale or an agreement to purchase is
15 completed during the context of a call, a commercial telephone solicitor must inform the
16 purchaser of his or her cancellation rights as described in the Commercial Telephone
17 Solicitation Act and must furthermore state the solicitor’s registration number as issued by the
18 Department of Licensing. Defendants have failed to orally inform consumers of these
19 cancellation rights as required by RCW 19.158.110(4) or include them in a written
20 confirmation of sale as provided by RCW 19.158.120(1). Furthermore, they have failed to
21 state their Department of Licensing registration number as required by RCW 19.158.110(4).
22 Defendants’ failure to orally inform consumers of their cancellation rights or their registration
23 number constitutes a violation of RCW 19.158.110(4) and, pursuant to RCW 19.158.030, also
24 constitutes a per se violation of RCW 19.86, the Consumer Protection Act.

25 5. Plaintiff is given leave to move the Court for a Decree requesting restitution and
26 civil penalties, pursuant to RCW 19.86.140 and RCW 19.158.140, and attorney fees and costs

1 incurred in the prosecution of this action pursuant to RCW 19.86.080.

2 6. Defendants and their successors, assigns, transferees, officers, agents, servants,
3 directors, employees, and all other person or entities in active concert or participation with
4 Defendants shall be informed of the terms and conditions of this Order.

5 7. Defendants and their successors, assigns, transferees, officers, agents, servants,
6 directors, employees, and all other persons or entities in active concert or participation with
7 defendants are hereby enjoined and restrained from engaging in the following acts and
8 practices in connection with any internet-related businesses:

9 a. Making any misrepresentations in a concrete factual setting regarding
10 earning potential, such as “Just like my last client, you will be blown away when you can see
11 what having atop search engine ranking can do for your business and your pocketbook,” either
12 implicitly or explicitly, in the context of their sale, advertising or delivery of services,
13 including, but not limited to misrepresentations regarding their ability to provide top search
14 engine rankings, their ability to increase traffic to customers’ websites, their ability to increase
15 sales, or their success rate;

16 b. Violating the Commercial Telephone Solicitation Act, RCW 19.158 et
17 seq;

18 c. Failing to orally inform consumers of their cancellation rights as
19 required by RCW 19.158.110 or include them in a written confirmation of sale as provided by
20 RCW 19.158.120; and

21 d. Failing to state their Department of Licensing registration number as
22 required by RCW 19.158.110.

23 8. Within two weeks of this Order, Defendants shall identify to Plaintiff the
24 consumers who received telephone solicitations from them and who purchased services from
25 them as a result of those solicitations since September 24, 2009. Plaintiff shall present a
26 declaration in support of civil penalties to the Court when these consumers have been

1 identified.

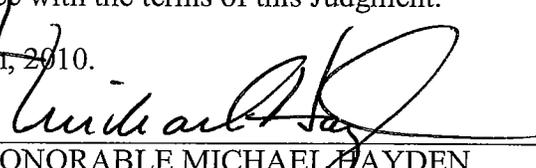
2 9. Within two weeks of this Order, Defendants shall identify to Plaintiff the
3 consumers who received telephone solicitations from Defendants during the period when the
4 script identified in Plaintiff's Motion for Summary Judgment as Exhibit E, Bates stamp
5 numbers 502228-502229 was used, (i.e. the script containing the misrepresentation identified
6 in Paragraph 2), and who purchased services from Defendants. Plaintiff is given leave to
7 move the Court for an Order of Restitution and/or Civil Penalties based on the information
8 provided pursuant to this Paragraph.

9 10. Pursuant to RCW 19.86.140, any violation of the terms of this Judgment shall
10 form the basis for further enforcement proceedings, including, but not limited to contempt of
11 Court proceedings and forfeiture of the civil penalty of up to twenty-five thousand dollars
12 (\$25,000) for violations committed after the date of this Judgment.

13 11. The violation of any of the injunctive terms of this Judgment shall constitute a
14 violation of RCW 19.86.020.

15 12. Jurisdiction is retained for the purposes of enabling Plaintiff to apply to the
16 Court for the enforcement of compliance with the terms of this Judgment.

17 DATED this 7 day of ^{April} ~~March~~, 2010.

18 
19 HONORABLE MICHAEL HAYDEN

20 Presented by:

21 ROBERT M. MCKENNA
22 Attorney General

23  39362 for
24 PAULA SELIS, WSBA # 12823
25 Assistant Attorney General
26 Attorneys for Plaintiff State of Washington