



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

Division of Marketing Practices  
Jonathan Kraden  
Attorney  
Direct Dial  
202-326-3257

April 19, 2004

Via Fax and Federal Express  
Judge Richard W Story  
United States District Court  
Richard B. Russell Federal Building  
75 Spring Street, S.W.  
Atlanta, GA 30303-3309  
Fax: (678) 450-2753

Re: FTC v. Alyon Technologies, et al.  
Civil Action File No. 1:03-1297-RWS

To the Honorable Judge Story:

Attached please find a courtesy copy of the FTC's Notice to the Court of Plaintiff's Communications with Consumers. Copies of the Notice and attachments are being sent via Federal Express to the Clerk of the Court and are being sent via Federal Express and facsimile to opposing counsel.

Sincerely,

  
Jonathan Kraden

cc: Lawrence Fox, Esq., counsel for Alyon Technologies, Inc. and Stephane Touboul  
William DuPre IV, Esq., counsel for TelCollect, Inc.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

FEDERAL TRADE COMMISSION,  
Plaintiff,

v.

ALYON TECHNOLOGIES, INC.,  
a Delaware corporation;

TELCOLLECT, INC.,  
a New York corporation;  
and

STEPHANE TOUBOUL,  
individually and as an  
officer of Alyon  
Technologies, Inc.,

Defendants.

CIVIL ACTION NO.  
1:03-CV-1297-RWS

NOTICE TO THE COURT OF  
PLAINTIFF'S COMMUNICATIONS  
WITH CONSUMERS

Counsel for the Plaintiff files this Notice to the Court to inform the Court of the fact that it distributed several dozen altered No-Call Affidavits to consumers. This action was discovered by the FTC's counsel as a result of information supplied to the FTC by Alyon's counsel. An FTC employee, while handling consumer complaints about Alyon's billing practices, altered one of the affidavit forms prescribed by the Court (the No-Call Affidavit, Attachment D to the Court's July 10, 2003, Order), and distributed such altered affidavits to a number of consumers.

This altered affidavit inserted language into the explanation field that the employee paraphrased from the Court's July 10<sup>th</sup> Order and an FTC News Release. Specifically the additional language stated:

Per the terms of the July 10 Court Order in the matter concerning FTC vs. Alyon Technologies, Inc. in the Northern District of Georgia: Alyon is prohibited from billing, collecting, or attempting to collect payment on this account because the relevant material terms of the sale were not fully disclosed to or authorized by me.

After a review of the employee's notes, it was determined that this version of the affidavit was sent out to approximately thirty to fifty consumers.<sup>1</sup>

The FTC has taken the following actions to rectify the situation. First, we are sending letters of correction to every one of the consumers contacted by the FTC employee, whether or not this employee sent them an altered affidavit. In addition, we are sending all consumers with whom the employee spoke a copy of the Court's July 10, 2003, Order and a copy of the Court's October 17, 2003, Order. A copy of the letter is attached to this Notice as Attachment A.

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<sup>1</sup> This employee spoke to approximately 135 consumers on the phone. We are unable to determine which thirty to fifty consumers out of this number might have received the altered affidavit.

Second, we have clarified the FTC News Release in case any consumers might have misunderstood it. The revised FTC News Release informs consumers that as clarified by a subsequent Court Order, issued on October 17, 2003, the Court's July 10, 2003 Order did not "prohibit Defendants from billing, collecting, or attempting to collect from past consumers. Instead, the Order set forth the parameters under which Defendants may continue to conduct these activities... ." A copy of the text of the revised FTC News Release is attached to this Notice as Attachment B.

The revised FTC News Release refers all consumers to the Court's Orders of July 10, 2003, and October 17, 2003 for further information. The two Court Orders can be accessed on the Commission's website, [www.ftc.gov](http://www.ftc.gov).

Counsel for the FTC will notify Alyon counsel, by virtue of this Notice and in a follow-up phone call, of the FTC's corrective action.

Undersigned counsel apologizes to the court that these altered affidavits were sent to consumers, and promises to make every effort to ensure that such a regrettable lapse does not happen again.

Respectfully Submitted,

Peter Lambertson (PL)

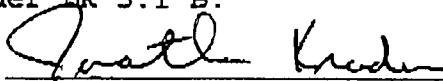
PETER LAMBERTSON (Admitted Pro-Hac Vice)  
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April 19, 2004

**Certificate of Counsel**

In accordance with LR 7.1, the undersigned hereby certifies that this memorandum has been prepared in Courier New 12 point font as required under LR 5.1 B.



PETER LAMBERTON

JONATHAN KRADEN

Federal Trade Commission, Room 238

600 Pennsylvania Avenue, N.W.

Washington, D.C. 20580

202-326-3274 (Lamberton) or 3257 (Kraden)

CERTIFICATE OF SERVICE

I hereby certify that on this Nineteenth day of April, 2004, I am serving the Plaintiff's Notice to the Court of Plaintiff's Communications with Consumers on the following counsel by fax and Federal Express overnight delivery:

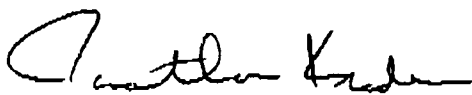
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WASHINGTON, D.C. 20580

Division of Marketing Practices  
Peter Lamberton  
Attorney  
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202-326-3274

April 19, 2004

Re: FTC v. Alyon Technologies, et al.  
Civil Action File No. 1:03-1297-RWS

Dear Consumer:

In May 2003, the Federal Trade Commission brought a lawsuit in the Northern District of Georgia against Alyon Technologies, Inc., Stephane Touboul, and TelCollect, Inc. On July 10, 2003, Judge Richard Story issued an order setting up a Consumer Dispute Resolution process to resolve consumer complaints. Judge Story's July 10<sup>th</sup> order included three affidavits, any one of which a consumer could file with Alyon and the FTC if he or she wished to dispute an Alyon bill.

It has come to my attention that the FTC provided several consumers with an affidavit that had been mistakenly altered. Some of the consumers who received this affidavit might have misunderstood the language that had been added to the affidavit as indicating that they did not have to pay their bill from Alyon until the FTC's case against Alyon was resolved. As clarified by a subsequent court order, issued on October 17, 2003, the court's July 10, 2003, order did not "prohibit Defendants from billing, collecting, or attempting to collect from past consumers. Instead, the Order set forth the parameters under which Defendants may continue to conduct these activities. . . ." Specifically, the court ordered the use of a dispute resolution mechanism as an interim means by which consumers could seek to establish that they had not authorized access to Alyon's services.

The FTC refers all consumers to the court's orders of July 10<sup>th</sup> and October 17<sup>th</sup> for further information. The two court orders have been included with this letter for your convenience. In addition, a hyperlink to the two court orders is provided on the Commission's Alyon News Release page on the Internet at [www.ftc.gov](http://www.ftc.gov). I apologize for any inconvenience this mistake may have caused you.

Sincerely,

A handwritten signature in cursive that reads "Peter Lamberton" followed by a circled monogram "PL".

Peter Lamberton

Enclosures

Attachment A



# Federal Trade Commission News

Office of Public Affairs - Press Release

[www.ftc.gov](http://www.ftc.gov)

600 Pennsylvania Avenue, NW • Washington, D.C. 20580 • 202-326-2180 • [opa@ftc.gov](mailto:opa@ftc.gov)

**FOR RELEASE: April 19, 2004**

## CLARIFICATION: ALYON TECHNOLOGIES LITIGATION

The Federal Trade Commission is clarifying an October 29, 2003, press release concerning its case against Alyon Technologies, Inc. Some consumers may have misunderstood the press release as permitting them to delay paying bills received from Alyon until the Commission's case is resolved. As clarified by a subsequent court order, issued on October 17, 2003, the court's July 10, 2003, order did not "prohibit Defendants from billing, collecting, or attempting to collect from past consumers. Instead, the Order set forth the parameters under which Defendants may continue to conduct these activities..." Specifically, the court ordered the use of a dispute resolution mechanism as an interim means available to consumers who wish to establish that Alyon had billed them without their permission.

In May 2003, the FTC and 13 state attorneys general charged that Alyon was illegally billing and collecting for videotext services purportedly accessed on the Internet. According to the FTC's complaint, the defendants used a modem dialing program that disconnected consumers from their own Internet service providers and reconnected them to the Internet sites Alyon billed for without the consumers' authorization or approval. Using the dialing program, the defendants allegedly captured the telephone number used by the modem and matched it against several databases of line subscriber information, databases which frequently contain errors. According to the FTC's complaint, the line subscribers identified as responsible for the captured telephone number later received bills charging them \$4.99 a minute for each minute the defendants claim videotext services were purchased, regardless of whether the line subscribers authorized the purchase.

The FTC refers all consumers to the court's orders of July 10<sup>th</sup> and October 17<sup>th</sup> for further information. The two court orders can be accessed on the Commission's Web site – [www.ftc.gov](http://www.ftc.gov). A hyperlink to the two court orders is provided on the Commission's Alyon News Release page on the Internet at [www.ftc.gov](http://www.ftc.gov).

**Attachment B**

**NOTE:** The Commission files a complaint when it has "reason to believe" that the law has been or is being violated, and it appears to the Commission that a proceeding is in the public interest. The complaint is not a finding or ruling that the defendant has actually violated the law. The case will be decided by the court.

**Copies of the complaint and the judge's order are available from the FTC's Web site at <http://www.ftc.gov> and also from the FTC's Consumer Response Center, Room 130, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. The FTC works for the consumer to prevent fraudulent, deceptive, and unfair business practices in the marketplace and to provide information to help consumers spot, stop, and avoid them. To file a complaint use the complaint form at <http://www.ftc.gov/ftc/complaint.htm>. The FTC enters Internet, telemarketing, identity theft, and other fraud-related complaints into Consumer Sentinel, a secure, online database available to hundreds of civil and criminal law enforcement agencies in the U.S. and abroad.**

**MEDIA CONTACT:** Nancy Ness Judy, Office of Public Affairs  
202-326-2180

**STAFF CONTACT:**