

CAUSE NO. D-1-GV-09-002144

STATE OF TEXAS,

Plaintiff,

v.

EVERYPRICE.COM, INC.
d/b/a Lowpricedigital.com

Defendant.

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

53rd JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION
AND REQUEST FOR INJUNCTIVE RELIEF**

Plaintiff, STATE OF TEXAS, acting by and through the Attorney General of Texas, Greg Abbott, complains of EVERYPRICE.COM, INC. (hereinafter "Everyprice") Defendant, and for cause of action would respectfully show as follows:

DISCOVERY CONTROL PLAN

1. The discovery in this case is intended to be conducted under Level 2 pursuant to Tex. R. Civ. Proc. 190.2(b)(3); 190.3(a).

JURISDICTION

2. This action is brought by Attorney General Greg Abbott, through his Consumer Protection and Public Health Division, in the name of the State of Texas and in the public interest under the authority granted him by Section 17.47 of the Texas Deceptive Trade Practices - Consumer Protection Act, Tex. Bus. & Com. Code Ann. Section 17.41 *et seq.* (Vernon 2002 and Supp 2008) ("DTPA") upon the ground that the Defendant has engaged in false, deceptive and misleading acts and practices in the course of trade and commerce as defined in, and declared unlawful by Sections

17.46(a) and (b) of the DTPA.

NATURE OF THE DEFENDANT'S OPERATIONS

3. Defendant owns and operates price-comparison Web sites. One of the benefits of shopping on the Internet is a consumer's ability to quickly locate numerous merchants selling a good or service that the consumer desires. Price-comparison Web sites consolidate the price-comparison search into one Web site, simultaneously displaying the prices of a particular good or service from multiple merchants. Consumers rely on price-comparison Web sites to provide an unbiased and truthful representation of the merchants and the goods that are offered.

DEFENDANT

4. Defendant Everyprice.com, Inc. is a corporation based and incorporated in New York and doing business in this State. Defendant's principal place of business is at 2925 Ave. N, Brooklyn, NY 11234. Defendant engages in business in the State of Texas but does not maintain a regular place of business in this state nor has Defendant designated an agent for service of process. This suit arises out of Defendant's business in this state as more specifically described below. Pursuant to the Texas Civil Practices & Remedies Code § 17.044, Defendant can be served by certified mail, return receipt requested, directed to Defendant through the Texas Secretary of State as an agent for service of process at the following address: Citations Section, Room 214, 1019 Brazos, Austin, Texas 78701.

VENUE

5. Venue for this cause of action lies in Travis County, Texas, because, under § 17.47(b) of the DTPA, venue is proper because Defendant has done business in the county of suit.

PUBLIC INTEREST

6. Because Plaintiff State of Texas have reason to believe that Defendant has engaged in, and

will continue to engage in the unlawful practices set forth below, Plaintiff State of Texas has reason to believe that Defendant has caused, and will continue to cause damage to residents of the State of Texas and cause adverse effects to legitimate business enterprises that conduct their trade and commerce in a lawful manner in this State. Therefore, the Consumer Protection and Public Health Division of the Office of the Attorney General of Texas believes and is of the opinion that these proceedings are in the public interest.

TRADE AND COMMERCE

7. Defendant has at all times described below engaged in conduct which constitutes trade and commerce as those terms are defined in the DTPA Section 17.45(6).

ACTS OF AGENTS

8. Whenever it is alleged in this Petition that Defendant did any act, it is meant that:
- A. Defendant performed or participated in the act, or
 - B. Defendant's officers, agents, or employees, performed or participated in the act on behalf of and under the authority of the Defendant.

NOTICE BEFORE SUIT

9. The Consumer Protection Division informed Defendant of the alleged unlawful conduct described below at least 7 days before filing suit as required by DTPA Section 17.47(a).

STATEMENT OF FACTS

10. Defendant owns and operates the price-comparison Web sites Everyprice.com and Lowpricedigital.com. These sites primarily display price listings of merchants offering to sell electronic goods. Defendant uses Google, Yahoo, and MSN to advertise its Web sites worldwide, including in Travis County, Texas.

11. Everyprice presents itself as operating neutral and unbiased price-comparison Web sites and providing comprehensive information about merchants and their products when, in truth and in fact, Everyprice accepts payments from merchants in return for representing to consumers that such merchants are trustworthy and reliable.

12. Defendant represents that "Everyprice.com is a free online comparison-shopping service that saves time and money by letting you compare products, prices and merchants all on one website." Defendant also represents that it is Everyprice.com's mission "[t]o provide consumers with all information needed, including where to buy, lowest price, and detailed reviews. In order to make an educated decision of what product would best suit their needs while staying in their budget."

13. In fact, Defendant accepts payment from merchants in return for representing that such merchants are trustworthy and reliable. The Defendant uses two-word phrases to represent certain merchants as "Trusted Sellers," "Quality Sellers," "Premium Sellers," and "Recommended Merchants." *See Exhibit A.* On Lowpricedigital.com, Defendant represents some merchants as having received the "Customer's Trust Award." These terms, however, as used by the Defendant, are not derived from any criterion that gives rise to such a status. Rather, merchants that want to use such terms to describe themselves on Defendant's Web sites need only pay Defendant to invent their own endorsements.

14. Moreover, the Defendant has represented that merchants are "Trusted" and "Recommended" despite knowing that such entities have received numerous consumer complaints regarding their business practices.

15. Consumers utilizing Defendant's price-comparison listings have complained directly to the Defendant about bait-and-switch tactics utilized by particular merchants. In fact, consumers

complained that they are surprised that Everyprice continues to represent merchants as "Trusted" and "Recommended" when such merchants are engaging in deceptive business practices.

16. Defendant falsely represents that it is not affiliated with any of the merchants listed at its websites "other than listing the stores' [sic] products, prices, images and descriptions." Defendant fails to disclose that Albert Houllou co-owns EP205, Inc. — a 33% owner of Defendant Everyprice — and that Houllou is the sole owner of numerous entities which have been prominently featured on Defendant's Web sites where they are represented to be "Trusted," "Recommended" or "Premium" sellers. These entities have been the focus of numerous consumer complaints regarding their business practices and include A&M Photoworld, LLC, Digital Liquidators, LLC, Preferred Photo, LLC, Prestige Photo, LLC, Camera Addict, LLC, Top Choice Digital, LLC, Regal Camera, LLC, Millennium Camera, LLC, Quest 4 Cameras, LLC, and Wild Digital, LLC. and Broadway Photo, LLC,

17. Broadway Photo, LLC. has been the subject of deceptive trade practice enforcement actions filed by the offices of the Texas and New York Attorneys General.

18. Defendant also maintains a five-star ranking system which purports to represent the reliability of each merchant and uses ten criteria to determine how many stars a particular merchant receives. Instead of granting stars for exceptional business practices or customer service, however, Defendant awards stars to merchants for engaging in business practices that are considered standard for online sellers. For example, Defendant grants a half-star for each of the following: having a privacy policy, disclosing on the product page whether an item is refurbished, disclosing on the product page whether an item is an international or grey market item, displaying a physical company address, and for displaying a customer support number.

19. Moreover, Defendant does not independently review the merchants to determine whether any merchant has actually satisfied the criteria. Instead, the Defendant provides merchants with a checklist, allowing the merchant to self report to Defendant whether the criteria are met.

VIOLATIONS OF THE DTPA

20. The State adopts by reference the information contained in paragraphs 1-19 and alleges that Defendant, in the course and conduct of trade and commerce, have directly and indirectly engaged in false, misleading, and deceptive acts and practices declared to be unlawful by the DTPA Section 17.46(a) and 17.46(b), including the following:

- A. Defendant, as alleged and detailed above, has engaged in false, misleading, or deceptive acts or practices in the conduct of trade or commerce. TEX. BUS. & COM. CODE ANN. §§ 17.46 (a);
- B. Defendant, as alleged and detailed above, has caused confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services. TEX. BUS. & COM. CODE ANN. §§ 17.46 (b) (2);
- C. Defendant, as alleged and detailed above, has represented that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he does not. TEX. BUS. & COM. CODE ANN. §§ 17.46 (b) (5); and
- D. Defendant, as alleged and detailed above, has represented that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, when they are of another. TEX. BUS. & COM. CODE ANN §§ 17.46 (b) (7).

APPLICATION FOR TEMPORARY AND PERMANENT INJUNCTION

21. Because Defendant has engaged in the unlawful acts and practices described above, Defendant has violated and will continue to violate the laws of the State of Texas as alleged in this Petition. Unless enjoined by this Honorable Court, Defendant will continue to violate the laws of the State of Texas and cause loss and damage to the people of this State. Therefore, Plaintiff requests a Temporary Injunction and Permanent Injunction be issued.

PRAYER FOR RELIEF

22. WHEREFORE, Plaintiff prays that Defendant be cited according to law to appear and answer herein; that before notice and hearing a TEMPORARY INJUNCTION be issued; and upon final hearing a PERMANENT INJUNCTION be issued, restraining and enjoining Defendant, Defendant's successors, assigns, officers, agents, servants, employees, and any other person in active concert or participation with Defendant from engaging in false, misleading, or deceptive acts or practices, including the following:

- A. Causing confusion or misunderstanding as to the sponsorship, approval, or certification of goods or services, including
 - i. providing endorsements such as "Trusted Seller," "Quality Seller," "Premium Seller," and "Recommended Merchant" for a merchant unless Defendant has conducted an independent review of the merchant and such endorsements have been substantiated;
 - ii. failing to disclose that Defendant is affiliated with any merchant displayed in Defendant's price listings; and
 - iii. maintaining and displaying a ranking system, such as Defendant's five-star ranking system, without independently determining whether

a business has satisfied the criteria that is the basis for the assigned rank.

- B. Misrepresenting that goods or services have sponsorship or approval which they do not have, including misrepresenting that a business or merchant is a "Trusted Seller," "Quality Seller," "Premium Seller," "Recommended Merchant," or similar endorsements;
- C. Misrepresenting that goods or services are of a particular standard, quality or grade, if they are another, including
 - i. misrepresenting that a business or merchant is a "Trusted Seller," "Quality Seller," "Premium Seller," and "Recommended Merchant" or similar endorsements;
 - ii. misrepresenting that Defendant or Defendant's Web sites are not affiliated with any business or merchant displayed in Defendant's price listings; and
 - iii. misrepresenting that Defendant's price-comparison services are unbiased or neutral.

23. In addition, Plaintiff State of Texas respectfully prays that this Court will:

- A. Adjudge civil penalties in favor of Plaintiff State of Texas of not more than \$20,000 against the Defendant per violation of the DTPA pursuant to Tex. Bus. & Com. Code §17.47(c);
- B. Award such relief as this Court finds necessary to redress injury to consumers resulting from Defendant's violations of the DTPA, including but not limited to

reformation or rescission of contracts, disgorgement of ill-gotten gains, and cancellation of purported debts.

- C. Award the State of Texas attorney's fees and costs pursuant to TEX. GOVT. CODE §402.006(c) for bringing this action, as well as such other and additional equitable relief as this Court may determine to be just and proper.

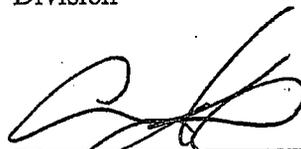
Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

C. ANDREW WEBER
First Assistant Attorney General

DAVID S. MORALES
Deputy Attorney General for Civil Litigation

PAUL CARMONA
Chief, Consumer Protection & Public Health
Division



COREY DAVID KINTZER
State Bar Number 24046219
Assistant Attorney General
Consumer Protection & Public Health Division
Post Office Box 12548
Austin, Texas 78711-2548
Telephone 512-463-2185
Facsimile 512-473-8301
**ATTORNEY FOR PLAINTIFF,
THE STATE OF TEXAS**

EveryPrice.com
It pays to know every price

Login
Password
Free Registration

Search for Every Price

Keyword **GO!**

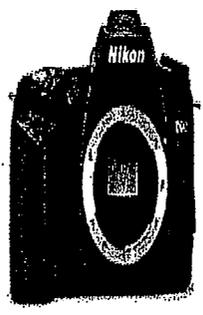
Search within: Cameras & Photography

Photo Electronics Computers Home & Garden
Jewelry Travel Musical Instruments See All...

Back To: Home > Cameras & Photography > Digital Cameras > Nikon D90 12.3 Megapixel SLR Digital Camera Camera Body 25446

Product Details

Nikon D90 12.3 Megapixel SLR Digital Camera Camera Body 25446



Price Comparison
Product Details

Part Number: 25446

The Nikon D90 SLR Digital Camera, with its 12.3 megapixel DXformat CCD, 3 High resolution LCD display, Scene Recognition System, Picture Control, Active DLighting, and onebutton Live View, provides photo enthusiasts with the image quality and performance they need to pursue their own vision while still being

Price Comparison

Order for only \$778.00 by Phone Call Toll-Free 1-800-810-6237

PREMIUM SELLER

BroadwayPhoto
1-800-897-7090

Get it for: **\$778.00**

click to purchase

LOWEST PRICE

LENSES N MORE

Get it for: **\$679.00**

click to purchase

Enter your ZIP Code for Tax & Shipping: Calculate

Seller	Seller Rating	Price (USD)	Total Price	Availability	Purchase
BroadwayPhoto 1-800-897-7090 <i>Trusted Seller</i>	★★★★★ 5036 Reviews PREMIUM SELLER	Best Value \$778.00 Free shipping	Enter ZIP Code: <input type="text"/> Calculate	<input checked="" type="checkbox"/> In Stock Top Service & Fast Shipping @ Low Prices	See it at Broadway Photo
PrestigeCamera 1-800-492-2183 <i>Quality Seller</i>	★★★★★ 6051 Reviews	BEST PICK \$752.00 Free shipping THE LOWEST PRICE FROM A TRUSTED SOURCE		<input checked="" type="checkbox"/> In Stock Brand New w/Full USA Warranty	See it at Prestige Camera
LENSES N MORE <i>Featured Seller</i>	★★★★★ Rate this seller	\$679.00 Lowest Price		<input checked="" type="checkbox"/> In Stock Friendly Service! USA Warranty! Free Shipping!	See it at LOWEST PRICE

STATE'S EXHIBIT
 A