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October 27, 2017

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Re: Guardian Digital, Inc. adv. TollFreeNumbers, Inc., et al.
Docket No.: BER-L-1398-15

Dear Counsellors:

Please accept the following as my Decision on the Arbitration of the above referenced matter.

This presents as a dispute between Guardian Digital, Inc. ("Guardian"), and TollFreeNumbers, Inc. ("TollFree"). Guardian is a web-hosting company and TollFree is an 800 and Vanity Number provider. TollFree offers its services principally through its website, and Guardian hosted TollFree's website from early 2001 until the relationship deteriorated in August-October 2009.

TollFree seeks the return of a \$21,000 escrow plus \$15,000 in damages. It has abandoned its claim for legal fees.

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Guardian Seeks \$21,218.40 plus \$2,500.00, a total of \$23,718.40, for webhosting and other services.

For the reasons set out below, I find that Guardian breached a verbal month-to-month contract that it had with TollFree when it shut down TollFree's website on or about Friday, October 2, 2009, until on or about Thursday, October 8, 2009. I find that only a month-to-month contract existed at any time after the first year of the relationship. TollFree paid Guardian Digital through October 2009 based on the \$1,263/month average cost of the 2-year billing of the January 1, 2009, invoice, at which point the month-to-month contract terminated, having been breached by Guardian.

I find TollFree was damaged in the sum of \$15,000.00 by Guardian's unwarranted shutting down of TollFree's website, and I grant TollFree judgment against Guardian for \$15,000.00. I further find that TollFree paid Guardian in full for its webhosting services and dismiss Guardian's damage claim. The escrowed amount of \$21,000.00 is hereby ordered to be returned to TollFree.

1. The parties entered into an oral contract for Guardian to provide TollFree with website hosting and other services commencing on or about December 14, 2001, when TollFree paid Guardian \$3,800.00 for Project Engineering, one month's web hosting, one year's hardware support, and other services under an Invoice dated December 27, 2001, in the amount of \$5,265.18. That invoice included a one-month "security deposit" of \$649.00 of which there was no mention of a disposition.

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2. Guardian's then attorney acknowledged to Judge Contillo in October 2009 in open Court that the parties were engaged in a verbal contract, that there was no written contract, and that Guardian provided TollFree with services for a monthly fee.

3. The parties agreed to an initial one-year commitment to each other, following which there was no further express agreement to a term. Guardian rendered a second invoice on January 24, 2002, for two months' internet and backup service. Guardian then rendered a third invoice on April 23, 2002, for three months' internet and backup service. Guardian issued ten more invoices for three months' internet and backup service into mid-2004, all at \$2,166.54.

4. On October 14, 2004, Guardian issued an invoice for two months at \$1,895.75, for another month at \$415, and backup service for two and a half months, without explanation.

5. Oddly, the next invoice was issued only a week later on October 21, 2004, for \$11,866.14 for one year's internet and backup service with a four-payment schedule running through July 2005 without a specific date on which payments were due after the first payment due on November 20, 2004. There was no explanation offered on the invoice for the sudden shift in amount and terms. TollFree paid the invoice in three payments without any regard for the payment schedule; the last payment of \$7,892.03 was made on March 3, 2005.

6. The next Guardian Invoice was rendered on September 15, 2005, for \$6,200.00 for four months' service through March 7, 2006, without explanation. It was paid on October 11, 2005.

7. Invoices followed on February 17, 2006, for six months; on August 6, 2006, for one year; on October 2, 2007, for one year and five months; and finally on January 21, 2009, for

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two years. No explanation for the disparate service periods was provided on any of the invoices. David Wreski, Guardian's principal, acknowledged at the Arbitration hearing that by extending the periods contemplated on the invoices, he was attempting to project and solidify his future cash flow.

8. At no time during the relationship did Guardian ever send TollFree a notice of late payment or default. Rather, Guardian billed for various amounts and periods when and as it saw fit and TollFree paid in various amounts when and as it saw fit.

9. Based on the foregoing, no particular term can be determined for the agreement between Guardian and TollFree after the agreed initial one year's commitment other than month-to-month. From and after the first anniversary Guardian charged TollFree a monthly fee for varying-length periods, leading to the inescapable conclusion that the relationship was month-to-month and based on a whimsical invoicing and payment history. Further, Guardian's own attorney stipulated to the Court that the parties operated on a month-to-month basis with no written contract.

10. In or about August 2009 Guardian transitioned from a website hosting operation with its own office and servers to a remote business utilizing another company's servers. It laid off its employees and relocated from its office to the owner's home. A casualty of the revised business model was TollFree's principal contact at Guardian, Ryan Maple. Following Maple's departure, the outsourcing of Guardian's business was laid bare, and TollFree encountered previously unexperienced difficulties accessing and managing its website. TollFree then determined to take its business elsewhere. Guardian learned of TollFree's dissatisfaction and

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suspected imminent departure and reacted by claiming ownership of the TollFree website, demanding payment, first locking TollFree out of its website and then shutting down TollFree's website.

11. Prior to Guardian's transition from a web-hosting to out-sourcing, and before the departure of Ryan Maple, TollFree's principal contact at Guardian, part of TollFree's "package" had been a "staging site" on which changes could be implemented and reviewed before going "live" on the TollFree website.

12. With the departure of Maple and Guardian's migration of TollFree's website to a remote server, the staging site was lost, and when TollFree demanded its reinstatement, Guardian demanded \$9,000 to restore TollFree's access to its website and another \$2,500 to remake the TollFree staging site. At that point TollFree determined to part ways with Guardian and offered to pay Guardian \$11,500 (\$9,000 installment payment on the Jan 21, 2009, invoice plus \$2,500 on the July 7, 2009, invoice for recreation of the "staging site").

13. On September 15, 2009, the day following TollFree's offer to pay \$11,500, Guardian blocked TollFree's access to its website and demanded \$21,218.40 (the entirety of the January 21, 2009, invoice plus the July 9, 2009, invoice for \$2,500 for recreation of the "staging site"). Wreski testified at the Arbitration hearing that he locked Toll Free out of its website because Bill Quimby, TollFree's principal, was "disgruntled" and repeatedly indicated he wanted to leave Guardian.

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14. Following the parties' inability to reach agreement as to who owed what to whom, on October 2, 2009, Guardian shut down TollFree's website, in Wreski's words not because of non-payment, but because Bill Quimby was "belligerent".

15. TollFree sought and obtained an Order to Show Cause to reinstate its website when on October 9 Judge Contillo ordered the TollFree website restored, but due to Guardian's claims of being owed money Judge Contillo ordered TollFree to post a \$21,000.00 escrow, which remains in escrow to this day.

16. It was not until May of 2010 after return trips to Judge Contillo that TollFree was able completely to extricate its website from Guardian.

17. In the period prior to October 2, 2009, Guardian's weekly receipts averaged between \$20,000.00 and \$25,000.00, but fell to \$5,604.92 due to the shutting down of its website. Hence, TollFree's loss due to the shutdown was between \$14,395.08 and \$19,395.08, clearly supporting TollFree's damage claim of \$15,000.00.

I have not included case citations due to the request for brevity. If wither party wishes a recitation of the law, please advise.



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