

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

FEDERAL TRADE COMMISSION,  
  
Plaintiff,

v.

BAY AREA BUSINESS COUNCIL, INC.,  
a Florida corporation,  
  
BAY AREA BUSINESS COUNCIL CUSTOMER  
SERVICE CORP., a Florida corporation,  
  
AMERICAN LEISURE CARD CORP., a  
Florida corporation,  
  
PETER J. PORCELLI, II, individually and as an  
officer or director of the corporate defendants,  
  
CHRISTOPHER TOMASULO, individually and  
as an officer or director of the corporate  
defendants, and  
  
BONNIE A. HARRIS, individually and as an  
officer or director of the corporate defendants,  
  
Defendants.

020 5762

Civil Action No.

JUDGE JOHN W. BARRAH

MAGISTRATE JUDGE ASHMAN

**COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF**

Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), for its complaint alleges:

1. The FTC brings this action under Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, and the Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing Act"), 15 U.S.C. § 6101 *et seq.*, to

secure preliminary and injunctive relief, restitution, rescission or reformation of contracts, disgorgement, and other equitable relief for Defendants' deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the FTC's Trade Regulation Rule entitled "Telemarketing Sales Rule" (the "Telemarketing Sales Rule") 16 C.F.R. Part 310.

#### **JURISDICTION AND VENUE**

2. This Court has subject matter jurisdiction pursuant to 15 U.S.C. §§ 45(a), 53(b), 57b, 6102(c), and 6105(b), and 28 U.S.C. §§ 1331, 1337(a), and 1345.

3. Venue in the United States District Court for the Northern District of Illinois is proper under 15 U.S.C. §§ 53(b).

#### **PLAINTIFF**

4. Plaintiff Federal Trade Commission is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58, as amended. The Commission is charged, *inter alia*, with enforcement of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. The Commission also enforces the Telemarketing Sales Rule, 16 C.F.R. Part 310, which prohibits deceptive or abusive telemarketing acts or practices. The Commission is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act and the Telemarketing Sales Rule, to secure such equitable relief as may be appropriate in each case, including restitution for injured consumers. 15 U.S.C. §§ 53(b), 57b, 6102(c), and 6105(b).

#### **DEFENDANTS**

5. Defendant Bay Area Business Council, Inc., is a Florida corporation, with its principal place of business at 801 West Bay Drive, Largo, Florida 33770. Bay Area Business

Council, Inc. transacts or has transacted business in the Northern District of Illinois and throughout the United States.

6. Defendant Bay Area Business Council Customer Service Corp. is a Florida corporation, with its principal place of business at 801 West Bay Drive, Largo, Florida 33770. Bay Area Business Council Customer Service Corp. transacts or has transacted business in the Northern District of Illinois and throughout the United States.

7. Defendant American Leisure Card Corp. is a Florida corporation, with its principal place of business at 801 West Bay Drive, Largo, Florida 33770. American Leisure Card Corp. transacts or has transacted business in the Northern District of Illinois and throughout the United States.

8. Defendant Peter J. Porcelli, II is an officer, or has held himself out as an officer, of Bay Area Business Council, Inc., Bay Area Business Council Customer Service Corp., and American Leisure Card Corp. (the "Corporate Defendants"). At all times material to this complaint, acting alone or in concert with others, Mr. Porcelli has formulated, directed, controlled, or participated in the acts and practices of the Corporate Defendants. Mr. Porcelli transacts, or has transacted business in the Northern District of Illinois.

9. Defendant Christopher Tomasulo is an officer, or has held himself out as an officer, of the Corporate Defendants. At all times material to this complaint, acting alone or in concert with others, Mr. Tomasulo has formulated, directed, controlled, or participated in the acts and practices of the Corporate Defendants. Mr. Tomasulo transacts, or has transacted business in the Northern District of Illinois.

10. Defendant Bonnie A. Harris is an an officer, or has held herself out as an officer,

of the Corporate Defendants. At all times material to this complaint, acting alone or in concert with others, Ms. Harris has formulated, directed, controlled, or participated in the acts and practices of the Corporate Defendants. Ms. Harris transacts, or has transacted business in the Northern District of Illinois.

### **COMMERCE**

11. At all times relevant to this complaint, Defendants have maintained a substantial course of trade in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

### **DEFENDANTS' BUSINESS PRACTICES**

12. Since at least June 2000, Defendants, acting directly or through their employees and agents, have solicited consumers by telephone throughout the United States and Canada and falsely promised to provide credit cards to consumers in exchange for an advance fee, typically ranging from \$169.95 to \$499.00.

13. During most of the telephone calls, Defendants offer to provide consumers with an unsecured MasterCard, with absolutely no security deposit, regardless of the consumer's credit history. Defendants represent to consumers that the consumer is pre-approved for a credit card, typically with a \$2,000 credit limit, and assure the consumer that if the consumer pays the required fee, the consumer will receive the credit card.

14. During the telephone calls to consumers, Defendants persuade consumers to divulge their checking account information, including their name as it appears on the account, the account number and the bank routing information.

15. Defendants routinely debit the bank accounts of consumers, in advance of

providing those consumers with the MasterCard credit cards promised during the telephone calls.

16. After debiting the funds from consumers' bank accounts, Defendants do not provide consumers with the promised MasterCard credit card.

17. At best, in many instances, Defendants provide consumers with a "temporary card" containing the MasterCard logo, the name "Bay Area Business Council" and a non-magnetic black strip on the back. The card also contains a telephone number for consumers to call to "activate" the card.

18. Only when consumers call to activate the card do the Defendants tell consumers that the consumers must send an additional amount plus a "security deposit" to receive an actual credit card, and the card can only be used by a consumer if the consumer deposits sufficient sums of money to pay for purchases made with the card.

19. In addition, Defendants continue to withdraw a "fee" of \$10 a month from consumers' bank accounts without the consumers' authorizations.

20. In addition, Defendants tell consumers that as an additional benefit to their credit card, Defendants will also provide consumers with other purported benefits, such as a "free" vacation package, free internet telephone long distance service, a household protection plan, and gasoline discount coupons. In many instances, consumers are then billed \$50 to \$100 monthly for these supposedly "free" benefits by companies which sell such products.

#### **VIOLATIONS OF SECTION 5 OF THE FTC ACT**

21. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits unfair or deceptive acts or practices in or affecting commerce.

22. Misrepresentations or omissions of material fact constitute deceptive acts or

practices prohibited by Section 5(a) of the FTC Act.

### COUNT I

23. In numerous instances, in connection with the telemarketing of advance fee credit cards, Defendants or their employees or agents have represented, expressly or by implication, that:

- a. After paying a fee, consumers will, or are highly likely to, receive an unsecured MasterCard credit card; and
- b. Consumers who agreed to purchase goods or services from the defendants would be charged the amount specified in the sales calls.

24. In truth and in fact:

- a. In numerous instances, after paying Defendants a fee, consumers do not receive an unsecured MasterCard credit card; and
- b. In numerous instances, Defendants charged or consumers or caused consumers to be charged more than the amount specified in the sales call.

25. Therefore, Defendants' representations, as set forth in paragraph 23, are false and misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

### THE FTC'S TELEMARKETING SALES RULE

26. The Commission promulgated the Telemarketing Sales Rule pursuant to Section 6102(a) of the Telemarketing Act, 15 U.S.C. § 6102(a). The Rule became effective on December 31, 1995.

27. The FTC Telemarketing Sales Rule prohibits telemarketers and sellers from

failing to disclose, in a clear and conspicuous manner, the total costs to purchase goods before a consumer pays for the goods. 16 C.F.R. § 310.3(a)(1)(i).

28. The Telemarketing Sales Rule also prohibits telemarketers and sellers from misrepresenting any material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of a sales offer. 16 C.F.R. § 310.3(a)(2)(iii).

29. The Telemarketing Sales Rule also prohibits telemarketers and sellers from, among other things, requesting or receiving payment of any fee or consideration in advance of obtaining or arranging a loan or other extension of credit when the seller or telemarketer has guaranteed or represented a high likelihood of success in obtaining or arranging a loan or other extension of credit. 16 C.F.R. § 310.4(a)(4).

30. Pursuant to Section 3(c) of the Telemarketing Act, 15 U.S.C. § 6102(c), and Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), violations of the Telemarketing Sales Rule constitute unfair or deceptive acts or practices in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

31. Defendants are “sellers” or “telemarketers” engaged in “telemarketing,” as those terms are defined in the Telemarketing Sales Rule. 16 C.F.R. §§ 310.2(r), (t), and (u).

### **VIOLATIONS OF THE FTC TELEMARKETING SALES RULE**

#### **COUNT II**

32. In numerous instances, in connection with the telemarketing of advance fee credit cards, Defendants or their employees or agents have misrepresented, directly or by implication, that consumers who agreed to purchase goods or services from the Defendants would be charged

the amount specified in the sales calls.

33. Defendants have thereby violated Section 310.3(a)(1)(i) of the Telemarketing Sales Rule, 16 C.F.R. § 310.3(a)(1)(i).

**COUNT III**

34. In numerous instances, in connection with the telemarketing of advance fee credit cards, Defendants or their employees or agents have misrepresented, directly or by implication, that after paying Defendants a fee, consumers will, or are highly likely to, receive an unsecured MasterCard credit card.

35. Defendants have thereby violated Section 310.3(a)(2)(iii) of the Telemarketing Sales Rule, 16 C.F.R. § 310.3(a)(2)(iii).

**COUNT IV**

36. In numerous instances, in connection with the telemarketing of advance fee credit cards, Defendants or their employees or agents have requested and received payment of a fee in advance of consumers obtaining a credit card when Defendants have guaranteed or represented a high likelihood of success in obtaining or arranging for the acquisition of an unsecured MasterCard credit card, for such consumers.

37. Defendants have thereby violated Section 310.3(a)(4) of the Telemarketing Sales Rule, 16 C.F.R. § 310.3(a)(4).

**CONSUMER INJURY**

38. Consumers throughout the United States and Canada have suffered, and continue to suffer, substantial monetary loss as a result of Defendants' unlawful acts and practices. In addition, Defendants have been unjustly enriched as a result of their unlawful acts and practices.



Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public.

**THIS COURT'S POWER TO GRANT RELIEF**

39. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), authorizes this Court to issue a permanent injunction against Defendants' violations of the FTC Act and, in the exercise of its equitable jurisdiction, to order such ancillary relief as temporary and preliminary injunctions, consumer redress, rescission, restitution, and disgorgement of profits resulting from Defendants' unlawful acts or practices, or other remedial measures.

40. Section 19 of the FTC Act, 15 U.S.C. § 57b, and Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b), authorize the Court to grant to the FTC such relief as the Court finds necessary to redress injury to consumers and other persons resulting from Defendants' violations of the Telemarketing Sales Rule, including the rescission and reformation of contracts, and the refund of money.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Federal Trade Commission, pursuant to Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, and Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b), and the Court's own equitable powers, requests that the Court:

1. Award Plaintiff such preliminary injunctive and ancillary relief as may be necessary to avert the likelihood of consumer injury during the pendency of this action and to preserve the possibility of effective final relief, including but not limited to, temporary and preliminary injunctions, appointment of a receiver, and an order freezing assets;
2. Permanently enjoin defendants from violating the FTC Act and the Telemarketing

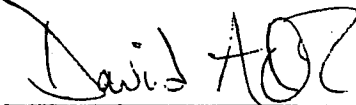
Sales Rule, as alleged herein;

3. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act and the Telemarketing Sales Rule, including but not limited to, rescission or reformation of contracts, restitution, refund of monies paid, and the disgorgement of ill-gotten monies; and

4. Award Plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

Respectfully Submitted,

WILLIAM E. KOVACIC  
General Counsel



Dated: August 13, 2002

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