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10
11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN JOSE DIVISION

14 FEDERAL TRADE COMMISSION,

15 Plaintiff,

16 v.

17 ALVIN CORDEIRO, individually and doing
business as Quick-Checks,

18 Defendant.

Civil Action No.

19
20 COMPLAINT FOR
21 INJUNCTIVE AND OTHER
22 EQUITABLE RELIEF

23 Plaintiff, the Federal Trade Commission ("Commission"), for its complaint alleges as follows:

24 1. The FTC brings this action under Sections 13(b) and 19 of the Federal Trade
25 Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, and the Telemarketing and Consumer
26 Fraud and Abuse Prevention Act ("Telemarketing Act"), 15 U.S.C. § 6101 *et seq.*, to secure a
27 permanent injunction and other equitable relief for the defendant's violations of the FTC's Trade
28 Regulation Rule entitled "Telemarketing Sales Rule" ("Rule"), 16 C.F.R. Part 310.

1 **JURISDICTION, VENUE AND INTRADISTRICT ASSIGNMENT**

2 2. Subject matter jurisdiction is conferred upon this Court by 15 U.S.C. §§ 45(a), 53(b),
3 57b, 6102(c) and 6105(b) and 28 U.S.C. §§ 1331, 1337(a), and 1345.

4 3. Venue in the Northern District of California is proper under 15 U.S.C. § 53(b) and
5 28 U.S.C. § 1391(b).

6 4. Assignment to the San Jose Division is proper because the defendant resides and
7 conducts business in the San Jose Division.

8
9 **THE PARTIES**

10 5. Plaintiff, the Federal Trade Commission, is an independent agency of the United States
11 Government created by statute. 15 U.S.C. § 41 *et seq.* The Commission enforces Section 5(a) of the
12 FTC Act, 15 U.S.C. § 45(a), which prohibits deceptive acts or practices in or affecting commerce, and
13 the Telemarketing Sales Rule, 16 C.F.R. Part 310, which prohibits deceptive or abusive telemarketing
14 acts or practices. The Commission may initiate federal district court proceedings to enjoin violations of
15 the FTC Act and the Telemarketing Sales Rule. 15 U.S.C. §§ 53(b), 57b, and 6105(b).

16 6. Defendant Alvin Cordeiro, doing business as Quick-Checks, resides and has transacted
17 business in San Jose, California. Through Quick-Checks, Mr. Cordeiro has offered account debit or
18 demand draft services to businesses, including those engaged in the sale of foreign lottery tickets to U.S.
19 consumers.

20
21 **COMMERCE**

22 7. At all times relevant to this complaint, the defendant has maintained a substantial course
23 of conduct in or affecting commerce, as “commerce” is defined in Section 4 of the FTC, 15 U.S.C.
24 § 44.

25
26 **DEFENDANT’S BUSINESS PRACTICES**

27 8. Cordeiro has provided account debit or demand draft services to various businesses,
28 including Win USA Services Ltd. ("Win USA"), a Canadian company that telemarketed chances and

1 interests in foreign lottery tickets to United States residents, particularly the elderly. Win USA
2 telemarketers induced consumers to "purchase" lottery tickets (from Australia or Spain) or convinced
3 them to pay a "processing" or other fee to receive purported lottery winnings. These consumers, many
4 of whom were elderly, paid hundreds or thousands of dollars, sometimes borrowing money or otherwise
5 straining their finances, in the expectation of winning.

6 9. The sale and trafficking in foreign lottery materials is a crime in the United States. Win
7 USA did not disclose to consumers that, by participating in a foreign lottery, the consumers were
8 participating in potential violations of U.S. federal criminal law, including laws prohibiting the importing
9 and transmitting of lottery materials by mail and otherwise, 18 U.S.C. §§ 1301 and 1302, and
10 anti-racketeering laws relating to gambling, 18 U.S.C. §§ 1952, 1953, and 1084.

11 10. In many cases, Win USA obtained consumers' payments by utilizing the defendant's
12 account debit or demand draft services. In the course of the telephone sales pitch, Win USA
13 telemarketers obtained the consumer's checking account number. Win USA sales representatives then
14 "verified" the consumer's purchase during a recorded, second call to the consumer. The defendant had
15 these recordings in his possession. Win USA transmitted the consumer's checking account information
16 to the defendant, who used the information to prepare a demand draft that functioned in the same
17 manner as the consumer's personal check, without the need for the consumer's signature.

18 11. The recorded "verifications" that the defendant possessed contained ample evidence that
19 some consumers did not authorize payments to Win USA, some were confused about the nature of the
20 purchase, and most were not given the information that they are required to be given under Section
21 310.3(a)(3)(ii) of the Rule. The recordings also clearly show that Win USA was engaged in deceptive
22 practices and in the marketing and sale of foreign lottery materials.

23 12. Over 37% of the total dollar volume of Win USA sales presented to Quick-Checks for
24 processing were rejected upon submission to consumers' banks. Of the amount that was successfully
25 debited from consumers' accounts, another 30% was returned or reversed at the consumers' request.
26 Such high rejection and return rates should have signaled to Cordeiro that there were fundamental
27 problems with the Win USA telemarketing efforts.

1 **VIOLATIONS OF THE TELEMARKETING SALES RULE**

2 13. The Commission promulgated the Telemarketing Sales Rule, 16 C.F.R. Part 310,
3 pursuant to Section 6102(a) of the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15
4 U.S.C. 6102(a). The Rule became effective December 31, 1995.

5 14. The Rule requires sellers and telemarketers to disclose all material restrictions,
6 limitations, or conditions to purchase, receive, or use the goods or services that are the subject of the
7 sales offer. 16 C.F.R. § 310.3(a)(1)(ii).

8 15. The Rule prohibits sellers and telemarketers from making a false or misleading statement
9 to induce any person to pay for goods or services. 16 C.F.R. § 310.3(a)(4).

10 16. The Rule requires that sellers or telemarketers who obtain payment by account debit or
11 demand draft must obtain the consumer's express verifiable authorization. Oral authorization is
12 permitted if (1) the authorization is tape recorded, clearly evidences the customer's authorization of
13 payment for the goods and services that are the subject of the sales offer, and evidences the customer's
14 receipt of the following information:

- 15 a. the date of the draft(s);
16 b. the amount of the draft(s);
17 c. the payor's name;
18 d. the number of draft payments (if more than one);
19 e. a telephone number for customer inquiry that is answered during normal business hours;
20 and
21 f. the date of the customer's oral authorization;

22 or (2) written confirmation of the transaction is sent to the consumer prior to the draft's submission for
23 payment that includes all of the information outlined in 16a-f above, and discloses the procedures the
24 customer can use to obtain a refund from the seller or telemarketer in the event the confirmation is
25 inaccurate. 16 C.F.R. § 310.3(a)(3).

26 17. Win USA is a "telemarketer" or "seller" engaged in "telemarketing" as those terms are
27 defined in the Rule, 16 C.F.R. § 310.2(r), (t) and (u).

1 18. It is a violation of the Rule for any person to provide substantial assistance or support to
2 any seller or telemarketer when that person knows or consciously avoids knowing that the seller or
3 telemarketer is engaged in any practice that violates Section 310.3(a) of the Rule, 16 C.F.R. § 310.3(b).

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

8 20. In numerous instances, in connection with telemarketing foreign lottery tickets, Win
9 USA made false or misleading statements to induce the purchase of lottery tickets or payment of
10 money, including but not limited to the following:

- 11 a. the consumer has been specially selected as one of a small group to play for a large cash
12 award;
- 13 b. the consumer's odds of winning a large cash award are 1 in 6, or otherwise very good,
14 or guaranteed;
- 15 c. the consumer's chances of winning are enhanced by purchasing through Win USA;
- 16 d. the consumer has won and will receive a large cash award;
- 17 e. in order to receive the award, the consumer must pay hundreds or thousands of dollars
18 of "processing" or other fees.

19 21. Therefore, Win USA violated Section 310.3(a)(4) of the Rule, 16 C.F.R. § 310.3(a)(4).

20 22. In numerous instances, in connection with telemarketing foreign lottery tickets, Win
21 USA failed to disclose that the sale and trafficking in foreign lotteries is a crime in the United States,
22 thereby violating Section 310.3(a)(1)(ii) of the Rule, 16 C.F.R. § 310.3(a)(1)(ii).

23 23. In numerous instances, in connection with obtaining consumers' payments by account
24 debits or demand drafts, Win USA failed to secure consumers' express verifiable authorization, thereby
25 violating Section 310.3(a)(3) of the Rule, 16 C.F.R. §310.3(a)(3).

26 24. In connection with providing account debit or demand draft services to Win USA,
27 defendant Cordeiro provided substantial assistance or support to the deceptive and illegal actions of
28 Win USA while knowing or consciously avoiding knowing that Win USA was engaged in acts or

1 practices that violate Section 310.3(a) of the Rule, as set forth in Paragraphs 20 through 23 above.
2 Defendant Cordeiro has thereby violated Section 310.3(b) of the Rule, 16 C.F.R. § 310.3(b).

3
4 **CONSUMER INJURY**

5 25. Consumers throughout the United States have suffered substantial monetary loss as a
6 result of the defendant's unlawful acts or practices.

7
8 **THIS COURT'S POWER TO GRANT RELIEF**

9 26. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant
10 injunctive and other ancillary relief to prevent and remedy violations of any provision of law enforced by
11 the Commission.

12 27. Section 19 of the FTC Act, 15 U.S.C. § 57b, and Section 6103(a) of the Telemarketing
13 Act, 15 U.S.C. § 6103(a), empower this Court to grant injunctive and such other relief as the Court
14 may deem appropriate to halt and redress violations of the Telemarketing Sales Rule. This Court, in the
15 exercise of its equitable jurisdiction, may award other ancillary relief to remedy injury caused by the
16 defendant's law violations.

17
18 **PRAYER FOR RELIEF**

19 WHEREFORE, plaintiff, the Federal Trade Commission, requests that this Court, as authorized
20 by Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, Section 6103 of the
21 Telemarketing Act, 15 U.S.C. § 6103, and pursuant to its own equitable powers:

- 22 a. Permanently enjoin the defendant from violating the Telemarketing Sales Rule and the
23 FTC Act, as alleged herein; and
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1 b. Award such relief as the Court finds necessary to redress injury to consumers resulting
2 from the defendant's violations of the Telemarketing Sales Rule and the FTC Act,
3 including but not limited to the refund of monies paid and the disgorgement of ill-gotten
4 monies.

5
6 Respectfully submitted,

7 Dated: February _____, 2001

8 _____
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