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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

United States Courts
Southern District of Texas
FILED
APR 14 2004
Michael N. Milby, Clerk

BC

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

ESTEBAN BARRIOS VEGA,
an individual doing business as
EBV Promotions, Paymentech Promotions,
and Promotions of Service,

Defendant.

United States Courts
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Civil Action No.

H-04-1478

COMPLAINT FOR INJUNCTION AND OTHER EQUITABLE RELIEF

Plaintiff, Federal Trade Commission ("FTC"), by its undersigned attorneys, 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 a permanent injunction, rescission of contracts and restitution, disgorgement of ill-gotten gains, and other equitable relief against Defendant for engaging in deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and for engaging in deceptive telemarketing acts or practices in violation of the FTC's Trade Regulation Rule entitled "Telemarketing Sales Rule" ("TSR"), 16 C.F.R. Part 310 as amended, in connection with the advertising, marketing and sale of work-at-home business opportunities.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over Plaintiff's claims 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 Southern District of Texas is proper under 15 U.S.C. § 53(b) and 28 U.S.C. §§ 1391(b) and (c).

THE PARTIES

4. Plaintiff **Federal Trade Commission** is an independent agency of the United States Government created by the FTC Act, 15 U.S.C. §§ 41 *et seq.* The FTC enforces the FTC Act, which prohibits unfair or deceptive acts or practices in or affecting commerce. The FTC also enforces the TSR, which prohibits deceptive or abusive telemarketing acts or practices. The FTC may initiate federal district court proceedings, through its attorneys, to enjoin violations of the FTC Act and the TSR, and to secure such other equitable relief, including rescission of contracts and restitution, and disgorgement of ill-gotten gains, as may be appropriate in each case. 15 U.S.C. §§ 53(b), 57b, and 6105(b).

5. Defendant **Esteban Barrios Vega** is an individual doing business as EBV Promotions, Paymentech Promotions, and Promotions of Service (collectively, "EBV"), with his office and principal place of business at 6223 Richmond Avenue, Suite 308A, Houston, Texas 77057. Defendant also uses mailing addresses of P.O. Box 571197, Houston, Texas 77257, P.O. Box 43836, Las Vegas, Nevada 89116, P.O. Box 471, La Puente, California 91747, and P.O. Box 17812, Los Angeles, California 90017. At all times material to this complaint, acting alone or in concert with others, he has formulated, directed, controlled or participated in the acts and

practices set forth in this complaint. Esteban Barrios Vega resides in and transacts or has transacted business in the Southern District of Texas.

COMMERCE

6. At all times relevant to this complaint, Defendant has 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.

COURSE OF CONDUCT

7. Since at least March 2001, and continuing thereafter, Defendant has advertised, promoted and sold work-at-home business opportunities to consumers throughout the United States, specifically targeting Hispanic consumers. Defendant, either directly or through third parties, uses newspaper classified advertisements and magazine advertisements in Spanish to promote his work-at-home business opportunities. The advertisements refer consumers to a toll-free telephone number for additional information. A typical advertisement reads

EXCELENTE TRABAJO Fábricas solicitan personal para trabajar desde su casa. Podría ganar hasta \$1,000/sem. Trabajos fáciles, no ventas. 1(800)391-5994.

In English translation, the advertisement reads “Excellent Work. Factories soliciting personnel to work from their homes. Earn up to \$1,000 per week. Easy work, no sales. 1(800)391-5994.”

8. When consumers call the number, Defendant’s representatives explain that the work-at-home business opportunities involve assembling products at home. In other instances, consumers are merely asked for their name and number and told that someone would call them back. Shortly thereafter, one of Defendant’s representatives calls the consumer back to explain that the work-at-home business opportunities involve assembling products at home.

9. In either case, Defendant's representatives state that EBV will provide consumers directly with assembly project work for pay. Defendant's representatives state that EBV will send consumers a catalog of various items for assembly from which consumers can choose. Defendant's representatives explain that once consumers decide what products they want to assemble they are to call EBV and an EBV representative will personally drop off the materials to be assembled. Defendant's representatives explain that, on a regular basis, an EBV representative will return to consumers' houses, pick up the assembled products, pay for the completed products in cash or by check, and drop off more materials for assembly. Defendant's representatives assure consumers that they will be working for EBV. Defendant's representatives tell consumers that they will earn between \$500 to \$1,000 per week, but that they could earn even more depending upon their ability and the products they choose to assemble.

10. Defendant's representatives explain that in order to receive assembling project work, consumers must pay a fee ranging from \$79 to \$149. Defendant's representatives variously describe the fee as a start up fee or as insurance for the materials to be assembled. In many instances, Defendant's representatives explain that the fee will be fully refunded after the consumers' first few weeks of work. Defendant's representatives instruct consumers that the fee must be paid in cash or by money order. In most instances, Defendant's representatives personally collect the money from consumers at their homes. In other instances, consumers mail their payment directly to EBV at a post office box address given by the EBV representative.

11. After paying the required fee, consumers do not receive the assembling project work or the promised supplies catalog. Instead, EBV representatives give consumers a booklet, partly in Spanish, partly in English, containing lists of companies to contact that allegedly offer

work-at-home business opportunities. Consumers also discover that they are not working for EBV. When consumers call EBV to complain or seek a refund, they often experience great difficulty speaking with a representative. Frequently, consumers are asked for their name and number and told that someone will call them back, but no one does. For those consumers able to speak with a representative, the representative tells them to read the booklet and follow the instructions. Few, if any, consumers receive refunds. Consumers who attempt to contact the companies listed in the booklet often learn that these companies no longer exist, have their own “start-up fees,” or have no relationship with EBV.

THE FEDERAL TRADE COMMISSION ACT

12. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits unfair or deceptive acts or practices in or affecting commerce. Misrepresentations or omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

VIOLATIONS OF SECTION 5(a) OF THE FTC ACT

COUNT ONE

13. In numerous instances, in the course of offering for sale and selling work-at-home business opportunities, Defendant or his employees or agents have represented, expressly or by implication, that consumers who pay Defendant a fee will obtain assembling project work for pay from Defendant.

14. In truth and in fact, after paying Defendant a fee, few, if any, consumers obtain assembling project work for pay from Defendant.

15. Therefore, the representation set forth in Paragraph 13 is false and misleading and constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT TWO

16. In numerous instances, in the course of offering for sale and selling work-at-home business opportunities, Defendant or his employees or agents have represented, expressly or by implication, that consumers who pay Defendant a fee are likely to earn a substantial level of earnings, such as \$500 to \$1,000 per week, assembling products at home for Defendant.

17. In truth and in fact, after paying Defendant a fee, few, if any, consumers are likely to earn a substantial level of earnings, such as \$500 to \$1,000 per week, assembling products at home for Defendant.

18. Therefore, the representation set forth in Paragraph 16 is false and misleading and constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

THE FTC'S TELEMARKETING SALES RULE

19. In 1994, Congress directed the FTC to prescribe rules prohibiting abusive and deceptive telemarketing acts or practices pursuant to the Telemarketing Act, 15 U.S.C. §§ 6101-6108. On August 16, 1995, the FTC adopted the TSR, 16 C.F.R. Part 310, which became effective on December 31, 1995. On January 29, 2003, the FTC amended the TSR by issuing a Statement of Basis and Purpose and the final amended TSR. 68 Fed. Reg. 4580, 4669. Except for specific provisions not alleged in this action, the amended TSR became effective March 31, 2003.

20. On or after December 31, 1995, the TSR prohibits telemarketers and sellers from misrepresenting, directly or by implication, in the sale of goods or services, 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).

21. On or after December 31, 1995, except for certain specified types of transactions, the TSR exempted from the scope of the TSR telephone calls initiated by a customer in response to an advertisement through any media, other than direct mail solicitations. 16 C.F.R. § 310.6(e). On or after March 31, 2003, the amended TSR modified Section 310.6(e) (now renumbered as Section 310.6(b)(5)) to also exclude from this exemption telephone calls initiated by a customer in response to an advertisement relating to business opportunities other than business arrangements covered by the Franchise Rule, 16 C.F.R. Part 436. 16 C.F.R. § 310.6(b)(5).

22. 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 TSR 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).

23. Defendant is a “seller” or “telemarketer” engaged in “telemarketing,” as those terms are defined in the FTC Telemarketing Sales Rule. 16 C.F.R. §§ 310.2(z), (t) & (u). Defendant’s work-at-home business opportunity is not a business arrangement covered by the Franchise Rule, 16 C.F.R. Part 436.

VIOLATIONS OF THE TELEMARKETING SALES RULE

COUNT THREE

24. Since at least April 1, 2003, in numerous instances, in the course of offering for sale and selling work-at-home business opportunities through telemarketing, Defendant or his employees or agents have misrepresented, directly or by implication, material aspects of the performance, efficacy, nature, or central characteristic of goods or services including, but not limited to, the representation that (i) consumers who pay Defendant a fee will obtain assembling project work for pay from Defendant and (ii) consumers who pay Defendant a fee are likely to earn a substantial level of earnings, such as \$500 to \$1,000 per week, assembling products at home for Defendant

25. Defendant has thereby violated Section 310.3(a)(2)(iii) of the Telemarketing Sales Rule, 16 C.F.R. § 310.3(a)(2)(iii).

CONSUMER INJURY

26. Consumers throughout the United States have suffered, and continue to suffer, substantial monetary loss as a result of Defendant's unlawful acts and practices. In addition, Defendant has been unjustly enriched as a result of his unlawful acts and practices. Absent injunctive relief by this Court, Defendant is likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

27. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant a permanent injunction, rescission of contracts and restitution, disgorgement of ill-gotten gains,

and other equitable relief to prevent and remedy any violations of any provision of law enforced by the FTC.

28. 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 this Court to grant such relief as the Court finds necessary to redress injury to consumers or other persons resulting from Defendant's violations of the TSR, including the rescission of contracts and restitution, and disgorgement of ill-gotten gains.

PRAYER FOR RELIEF

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

(a) 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 and an order freezing assets;

(b) Permanently enjoin Defendant from violating the FTC Act and the Telemarketing Sales Rule as alleged herein;

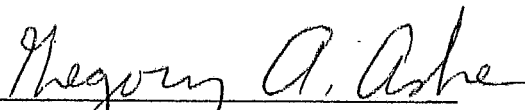
(c) Award such equitable relief as the Court finds necessary to redress injury to consumers resulting from Defendant's violations of the FTC Act and the Telemarketing Sales Rule including, but not limited to, rescission of contracts and restitution, and disgorgement of ill-gotten gains by Defendant; and

(d) Award plaintiff the costs of bringing this action and such other equitable relief as the Court may determine to be just and proper.

Dated: April 14, 2004

Respectfully submitted,

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