JAN 29 2007

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

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

FEDERAL TRADE COMMISSION, Plaintiff, v. SELECT PERSONNEL MANAGEMENT, INC., an Ontario, Canada, corporation d/b/a SELECT MANAGEMENT SOLUTIONS, and JAMES STEWART, individually and as an officer or director of Select Personnel Management, Inc., d/b/a Select Management Solutions, Defendants.	Case No. 07C 0529 JUDGE NORGLE MAGISTRATE JUDGE C

COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF

Plaintiff, the Federal Trade Commission ("FTC" or "the Commission"), for its Complaint alleges as follows:

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 temporary, preliminary, and permanent 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," 16 C.F.R. Part 310.

JURISDICTION AND VENUE

1. 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.

2. Venue in the United States District Court for the Northern District of Illinois is proper under 15 U.S.C. §§ 53(b) and 6105(b) and 28 U.S.C. § 1391(b), (c), and (d).

PLAINTIFF

3. Plaintiff, the FTC, 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, and to secure such equitable relief as may be appropriate in each case, including restitution for injured consumers. 15 U.S.C. §§ 53(b), 57b, and 6105(b).

DEFENDANTS

4. Defendant Select Personnel Management, Inc., is a Canadian company that does business as Select Management Solutions ("Select"). Select has its principal place of business at 80 Bradford Street, Suite 802, Barrie, Ontario, Canada. Select has formulated, directed, controlled, or participated in the acts or practices set forth in this Complaint. Select transacts or has transacted business in the Northern District of Illinois and throughout the United States.

5. Defendant James Stewart ("Stewart") is a director and/or officer of Select. Stewart has formulated, directed, controlled, or participated in the acts or practices set forth in this Complaint. Stewart transacts or has transacted business in the Northern District of Illinois and throughout the United States.

COMMERCE

6. 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 ACTIVITIES

7. Since at least December 2005, and continuing thereafter, defendants have marketed, offered for sale, and sold credit card interest rate reduction services to consumers. In the course of offering their credit card interest rate reduction services, defendants have placed, or caused the placement of, unsolicited outbound telephone calls to consumers throughout the United States. The placement of unsolicited outbound telephone calls to induce the purchase of defendants' services, also known as "telemarketing," is the primary method employed by defendants to sell their credit card interest rate reduction services to consumers.

8. While telemarketing their credit card interest rate reduction services to consumers, defendants have caused the caller identification services on consumers' telephones to display incoming telephone numbers that do not belong to defendants. In such instances, defendants have not actually placed the telephone calls from the telephone numbers displayed on consumers' caller identification services.

9. While telemarketing their credit card interest rate reduction services to consumers, defendants imply, directly or indirectly, that they have affiliations with consumers' credit card companies when in fact no such affiliations exist.

10. During their telemarketing calls to consumers, defendants state that they can reduce consumers' existing credit card interest rates down to rates between 4.75 percent and 9 percent.

11. Defendants also state that by paying a fee and purchasing defendants' credit card interest rate reduction services, consumers will save a minimum of $2500 as a result of reduced credit card interest rates.

12. Defendants guarantee that if consumers do not save a minimum of $2500 as a result of reduced credit card interest rates, consumers will receive a refund of the cost of defendants' services.

13. Defendants charge consumers $675.00, plus $20.00 shipping and handling costs, to purchase their credit card interest rate reduction services. Defendants typically charge the combined $695.00 to consumers' credit cards during the initial telemarketing calls.

14. After consumers purchase defendants' services, defendants mail them a package that contains, among other things, promotional materials with further promises to substantially reduce consumers' credit card interest rates. For example, defendants promotional materials state, ". . . time to take advantage of the best credit card rates in America with rates as low as **4.75% to 9.9% — the lowest rates in the country!**" (Emphasis in original.)

15. Defendants also include a "financial profile form" in the package mailed to consumers who purchase defendants' credit card interest rate reduction services. Consumers are

required to complete the financial profile form and mail it back to defendants. The financial profile form asks consumers to list their existing credit card debts and all other debts, such as medical bills, automobile loans, student loans, and mortgages. For each debt listed, consumers are to include, among other things, the customer service telephone number of the creditor, the current balance, credit limit, interest rate or "APR," and suggested minimum payment. The financial profile form also requires consumers to provide identifying information, such as name, address, monthly income, and social security number.

16. Sometime after consumers mail the completed financial profile form back to defendants, defendants initiate three-way telephone calls with the consumers and the customer service departments of the relevant credit card companies that consumers provided on the financial profile form. These three-way telephone calls merely consist of defendants verbally requesting that the credit card companies reduce the consumers' credit card interest rates. This is a task that consumers could perform themselves. The credit card companies typically decline the request, and the call ends. These three-way telephone calls are often the total extent of defendants' $695.00 credit card interest rate reduction services.

17. Defendants fail to provide consumers with the significant reductions in credit card interest rates and minimum $2500 savings that were promised during the initial telephone calls, and they typically fail to provide any reduction in consumers' credit card interest rates at all.

18. Despite defendants' failure to deliver on the promises made to consumers, and despite failing to perform any kind of service that consumers could not have done themselves, defendants rarely refund the $695.00 charged to consumers for purchasing defendants' credit card interest rate reduction services.

VIOLATIONS OF THE FEDERAL TRADE COMMISSION ACT

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

20. Misrepresentations or omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

COUNT I

21. In connection with the marketing, offering for sale, or sale of credit card interest rate reduction services, defendants or their employees or agents represent, directly or by implication, that defendants are affiliated with consumers' credit card companies.

22. In truth and in fact, defendants are not affiliated with consumers' credit card companies.

23. Therefore, the representation set forth in Paragraph 21 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 II

24. In connection with the marketing, offering for sale, or sale of credit card interest rate reduction services, defendants or their employees or agents represent, directly or by implication, that consumers who pay a fee and receive defendants' services are likely to experience a reduction in their existing credit card interest rates to rates between 4.75 percent and 9 percent.

25. In truth and in fact, in numerous instances, consumers who pay a fee and receive defendants' services, do not reduce their existing credit card interest rates to rates between 4.75 percent and 9 percent.

26. Therefore, the representation set forth in Paragraph 24 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 III

27. In connection with the marketing, offering for sale, or sale of credit card interest rate reduction services, defendants or their employees or agents represent, directly or by implication, that consumers who pay a fee and receive defendants' services will save at least $2500 in credit card interest charges.

28. In truth and in fact, in numerous instances, consumers who pay a fee and receive defendants' services do not save at least $2500 in credit card interest charges.

29. Therefore, the representation set forth in Paragraph 27 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 IV

30. In connection with the marketing, offering for sale, or sale of credit card interest rate reduction services, defendants or their employees or agents represent, directly or by implication, that defendants will provide a refund of the cost of defendants' services to consumers who pay a fee to purchase those services and do not save at least $2500 in credit card interest charges.

31. In truth and in fact, in numerous instances, defendants do not provide a refund of the cost of defendants' services to consumers who pay a fee to purchase those services and do not save at least $2500 in credit card interest charges.

32. Therefore, the representation set forth in Paragraph 30 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 TELEMARKETING SALES RULE

33. The Commission promulgated the Telemarketing Sales Rule, 16 C.F.R. Part 310, pursuant to Section 3(a) of the Telemarketing Act, 15 U.S.C. § 6102(a). The Rule became effective on December 31, 1995. On January 29, 2003, the FTC adopted an amended Telemarketing Sales Rule with most of the amendments becoming effective on March 31, 2003.

34. The Telemarketing Sales Rule 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).

35. The Telemarketing Sales Rule prohibits telemarketers and sellers from misrepresenting any material aspect of the nature or terms of the seller's refund, cancellation, exchange, or repurchase policies. 16 C.F.R. § 310.3(a)(2)(iv).

36. The Telemarketing Sales Rule also prohibits telemarketers and sellers from misrepresenting any affiliation with, or endorsement or sponsorship by, any person. 16 C.F.R. § 310.3(a)(2)(vii). Under the Telemarketing Sales Rule, "person" means any

"individual, group, unincorporated association, limited or general partnership, corporation, or other business entity." 16 C.F.R. § 310.2(v).

37. Effective January 29, 2004, under the Telemarketing Sales Rule it is an abusive telemarketing practice and violation of the Rule when telemarketers and sellers fail to transmit or cause to be transmitted the telephone number, and, when made available by the telemarketer's carrier, the name of the telemarketer, to any caller identification service in use by a recipient of a telemarketing call. 16 C.F.R. § 310.4(a)(7).

38. 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).

39. Defendants are "sellers" or "telemarketers" engaged in "telemarketing," as those terms are defined in the Telemarketing Sales Rule. 16 C.F.R. §§ 310.2(z), (bb) and (cc).

VIOLATIONS OF THE TELEMARKETING SALES RULE

COUNT V

40. In connection with the telemarketing of credit card interest rate reduction services, defendants or their employees or agents misrepresent, directly or by implication, that:

a. defendants are affiliated with consumers' credit card companies;

b. consumers who pay a fee and receive defendants' services will, or are highly likely to, reduce their existing credit card interest rates to rates between 4.75 percent and 9 percent;

c. consumers who pay a fee and receive defendants' services will save at least $2500 in credit card interest charges; and

d. defendants will provide a refund of the cost of defendants' services to consumers who pay a fee to purchase those services and do not save at least $2500 in credit card interest charges.

41. Therefore, defendants have violated Sections 310.3(a)(2)(iii), (iv), and (vii) of the Telemarketing Sales Rule, 16 C.F.R. § 310.3(a)(2)(iii), (iv), and (vii).

COUNT VI

42. In numerous instances, in connection with the telemarketing of credit card interest rate reduction services, defendants or their employees or agents have failed to transmit or to cause to be transmitted the telephone number, and, when made available by the telemarketer's carrier, the name of defendants, or the name of a telemarketer calling on behalf of defendants, to caller identification services in use by recipients of defendants' telemarketing calls.

43. Therefore, defendants have violated Section 310.4(a)(7) of the Telemarketing Sales Rule, 16 C.F.R. § 310.4(a)(7).

CONSUMER INJURY

44. Consumers throughout the United States 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 interest.

THIS COURT'S POWER TO GRANT RELIEF

45. 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), empower this Court to issue a permanent injunction against defendants' violations of the FTC Act and the Telemarketing Sales Rule, and, in the exercise of its equitable jurisdiction, to order such ancillary relief as a preliminary injunction, rescission, restitution, disgorgement of profits resulting from defendants' unlawful acts or practices, and other remedial measures.

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, 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, and an order freezing assets;

2. Enter a permanent injunction to prevent future violations of the FTC Act and the Telemarketing Sales Rule by defendants;

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, the 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 BLUMENTHAL
General Counsel

Dated: January 29, 2007

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