

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

T2U CO., INC.

**d/b/a/ RCP Communications, and
RICHARD C. PEPLIN, JR.,
individually and as an officer of the above
corporation,**

Defendants.

**COMPLAINT FOR
PERMANENT
INJUNCTION AND
OTHER EQUITABLE
RELIEF**

Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), for its Complaint alleges:

1. The FTC brings this action under Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), to obtain permanent injunctive relief, restitution, disgorgement, and other equitable relief for defendants' unfair and deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

JURISDICTION AND VENUE

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

3. Venue in this district is proper under 15 U.S.C. § 53(b) and 28 U.S.C. §§ 1391(b) and (c).

THE PARTIES

4. Plaintiff, the Federal Trade Commission, is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41 *et seq.* The Commission enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair and deceptive acts or practices in or affecting commerce. The Commission may initiate federal district court proceedings to enjoin violations of the FTC Act and to secure such equitable relief as is appropriate in each case, including restitution for injured consumers. 15 U.S.C. § 53(b).

5. Defendant T2U Co., Inc. ("T2U"), formerly known as RCP Enterprise Group, Inc., is an Ohio corporation having its office and principal place of business at 25100 Detroit Rd., Westlake, OH 44145. T2U transacts or has transacted business in this district. T2U and RCP Enterprise Group have done business under the name RCP Communications.

6. Defendant Richard C. Peplin, Jr. ("Peplin") is the president of T2U. At all times material to this complaint, he has formulated, directed, controlled, or participated in the acts and practices of T2U, including the acts and practices set forth in this complaint. Peplin transacts or has transacted business in this district. Peplin has done business under the name RCP Communications.

COMMERCE

7. At all times material to this complaint, defendants' course of business, including the acts and practices alleged herein, has been and is in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS' BUSINESS PRACTICES

8. Since at least July 1997, defendants have advertised, offered, and sold prepaid telephone cards at a price of \$9.95 per month, which defendants have charged to consumers' telephone bills. The telephone cards are valid for a predetermined number of minutes per month (usually 20), which expire if not used at the end of each month.

9. In numerous instances, defendants have caused charges to be placed on consumers' telephone bills for one or more prepaid telephone cards without the consumer's authorization or agreement.

10. In numerous instances, defendants failed to send the telephone cards to consumers for up to three months. Even though consumers had not yet received the telephone cards and, consequently, could not use them, defendants caused charges to be placed on the consumers' telephone bills for the prepaid telephone cards.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

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

COUNT I

12. In numerous instances, defendants have represented, expressly or by implication, directly or through an intermediary, that a consumer is legally obligated to pay for defendants' prepaid telephone cards and authorized defendants to bill the monthly charge for the telephone cards to the consumer's telephone number.

13. In truth and in fact, in numerous instances, the consumer is not legally obligated to pay for defendants' prepaid telephone cards and has not authorized defendants to bill the monthly charge for the telephone cards to the consumer's telephone number.

14. Therefore, defendants' representations as alleged in Paragraph 12, are false and deceptive, and violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT II

15. In numerous instances, defendants have caused charges for defendants' prepaid telephone cards to be billed to a consumer's telephone bill without the consumer's authorization.

16. Defendants' practice of causing charges to be billed to a consumer's telephone bill without the consumer's authorization causes or is likely to cause substantial injury to consumers that is not reasonably avoidable by consumers themselves and is not outweighed by countervailing benefits to consumers or to competition.

17. Therefore, defendants' practice, as alleged in Paragraph 15, is unfair and violates Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

CONSUMER INJURY

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

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

PRAYER FOR RELIEF

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

1. Permanently enjoin the defendants from violating the FTC Act, as alleged herein;
2. Award such relief as the Court finds necessary to redress injury to consumers resulting from the defendants' violations of the FTC Act, including but not limited to, the refund of monies paid, and the disgorgement of ill-gotten monies; and

3. 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,

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