

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

FEDERAL TRADE COMMISSION,
Plaintiff,

v.

HANSON PUBLICATIONS, INC.,
a corporation,

9069-5057 QUEBEC, INC.,
a corporation, also d/b/a Hanson Publications, Inc.,

**ASSOCIATED MERCHANT PAPER
SUPPLIES, INC.,**
**a corporation, also d/b/a AMPS and Fourniture
de Papier Associated Merchant, Inc.,**

ALBERT MOUYAL,
**individually and as an owner and/or officer or
director of the corporate defendants,**

ADRIAN P. TOWNING,
**individually and as an owner and/or officer or
director of the corporate defendants, and**

CHARLES HAMOUTH,
**individually and as an owner and/or officer or
director of the corporate defendants,**
Defendants.

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Case No.

Judge

Mag. Judge

**COMPLAINT FOR
INJUNCTIVE AND OTHER
EQUITABLE RELIEF**

Plaintiff, the Federal Trade Commission (“Commission”), by its undersigned attorneys, alleges:

1. This is an 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 permanent injunctive relief, rescission of contracts, restitution, 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 Commission’s Trade Regulation Rule entitled “Telemarketing Sales Rule,” 16 C.F.R. Part 310, in connection with the sale of business directories and nondurable office supplies.

JURISDICTION AND VENUE

2. This court has jurisdiction over this matter 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 Ohio is proper under 15 U.S.C. § 53(b), and 28 U.S.C. §§ 1391 (b), (c), and (d).

Plaintiff

4. Plaintiff Federal Trade Commission is an independent agency of the United States Government created by statute, 15 U.S.C. §§ 41-58. The Commission enforces 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 practices. The Commission may 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

5. Defendant Hanson Publications, Inc. (“Hanson”) is a Canadian corporation with its offices and principal place of business located at 111 Peter Street #406, Toronto, Ontario M5V 2H1. Hanson transacts or has transacted business in the Northern District of Ohio.

6. Defendant 9069-5057 Quebec, Inc. (“Hanson-Quebec”) is a Canadian corporation with its offices and principal place of business located at 1000 St. Antoine Street West, Suite 555, Montreal, Quebec H3C 3R7. It also does business as Hanson Publications, Inc. Hanson-Quebec transacts or has transacted business in the Northern District of Ohio.

7. Defendant Associated Merchant Paper Supplies, Inc. (“AMPS”) is a Canadian corporation with its offices and principal place of business located at 1000 St. Antoine Street West, Suite 555, Montreal, Quebec H3C 3R7. It also does business as AMPS and Fourniture de Papier Associated Merchant, Inc. AMPS transacts or has transacted business in the Northern District of Ohio.

8. At all times material to this Complaint, Defendant Albert Mouyal has been an owner and officer of Hanson, Hanson-Quebec and AMPS. Acting alone or in concert with others, he has formulated, directed, controlled, or participated in the acts and practices set forth in this Complaint. Defendant Mouyal transacts or has transacted business in the Northern District of Ohio.

9. At all times material to this Complaint, Defendant Adrian P. Towning has been an owner and officer of Hanson, Hanson-Quebec and AMPS. Acting alone or in concert with others, he has formulated, directed, controlled, or participated in the acts and practices set forth in this Complaint. Defendant Towning transacts or has transacted business in the Northern District of Ohio.

10. At all times material to this Complaint, Defendant Charles Hamouth has been an owner and officer of Hanson, Hanson-Quebec, and AMPS. Acting alone or in concert with others, he has formulated, directed, controlled, or participated in the acts and practices set forth in this Complaint. Defendant Hamouth transacts or has transacted business in the Northern District of Ohio.

COMMERCE

11. At all times material hereto, Defendants have been engaged in the business of offering for sale and selling, through telemarketers, business directories and nondurable office supplies, such as, printer rolls for credit card machines, machine ribbons, counterfeit detection pens, and credit card machine cleaners, in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS’ BUSINESS ACTIVITIES

12. Since at least 1997, and continuing thereafter, Defendants have engaged in a plan, program or campaign to sell business directories and nondurable office supplies, such as, printer rolls for automated credit card machines, machine ribbons, counterfeit detection pens, and credit card machine cleaners, via interstate telephone calls to various businesses and other organizations (hereinafter “consumers”) throughout the United States.

13. Defendants, directly or through telemarketers, have contacted consumers by telephone. Using a series of telephone calls, Defendants mislead consumers into believing goods have been ordered when they have not.

14. In the initial phone call, Defendants, directly or through their telemarketers, telephone consumers using some pretext to obtain the make and model of the credit card machine and the name of the employee associated with purchasing office supplies. They take this opportunity to confirm the consumer's mailing address.

15. The next call is the sales call. Defendants, directly or through their telemarketers, employ several deceptive tactics to sell business directories and/or nondurable office supplies. In numerous instances, Defendants have represented, expressly or by implication, that they are, or are connected with, the consumer's automated credit card machine supplier or that they are the consumer's regular supplier of printer rolls. In addition, Defendants, directly or through telemarketers, have contacted consumers and represented that the consumers have previously listed in their business directory or previously authorized an order for Defendants' business directory.

16. In both phone calls, Defendants fail to identify themselves or to promptly, and clearly and conspicuously, disclose that the purpose of the call is to sell business directories or nondurable office supplies.

17. Using the information obtained in the previous phone calls, Defendants often telephone again before shipping the product, purporting to "verify the shipping address" and reiterate the misrepresentation that the product had been ordered.

18. In numerous instances, consumers permit Defendants to ship business directories or nondurable office supplies, believing that Defendants are associated with consumers' regular suppliers, and/or that the goods had previously been ordered. Most consumers do not believe that the purpose of Defendants' calls is to solicit new orders for business directories or nondurable office supplies from a company with which the consumer has had no dealings.

19. Defendants follow up the telephone calls by causing business directories and/or nondurable office supplies to be shipped to the consumer. Defendants send the consumer an invoice shortly after the goods are shipped. Often the first shipment of goods is quickly followed by one or more additional shipments that the consumer has never agreed to receive. Defendants charge consumers substantially higher prices for these goods than consumers have paid their regular suppliers in the recent past.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

COUNT I

20. In numerous instances, in connection with the sale, offering for sale, or distribution of business directories and nondurable office supplies, Defendants have represented, expressly or by implication, through, *inter alia*, telephone calls, letters, invoices, packing slips, or shipment of business directories and nondurable office supplies, that consumers ordered the goods that were shipped and/or billed to them by Defendants.

21. In truth and in fact, consumers did not order the goods that were shipped and/or billed to them by Defendants.

22. Therefore, the representations set forth in Paragraph 20 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).

COUNT II

23. In numerous instances, in connection with the sale, offering for sale, or distribution of nondurable office supplies, Defendants have represented, expressly or by implication, through, *inter alia*, telephone calls, that Defendants are connected with the consumer's automated credit card machine supplier or that they are the consumer's regular supplier.

24. In truth and in fact, Defendants are not connected with the consumer's automated credit card machine supplier and they are not the consumer's regular supplier.

25. Therefore, the representations 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).

VIOLATIONS OF THE TELEMARKETING SALES RULE

26. In the Telemarketing Act, 15 U.S.C. § 6101 *et seq.*, Congress directed the Commission to prescribe rules prohibiting deceptive and abusive telemarketing acts or practices. On August 16, 1995, the Commission promulgated the Telemarketing Sales Rule, 16 C.F.R. Part 310, with a Statement of Basis and Purpose, 60 Fed. Reg. 43842 (August 23, 1995). The Telemarketing Sales Rule became effective December 31, 1995, and since then has remained in full force and effect.

27. Telephone calls between a telemarketer and a business that involve the retail sale of nondurable office supplies are subject to the Telemarketing Sales Rule's prohibitions against deceptive

and abusive telemarketing acts or practices. 16 C.F.R. § 310.6(g). In its Statement of Basis and

Purpose for the Telemarketing Sales Rule, the Commission stated:

[T]he Commission's enforcement experience against deceptive telemarketers indicates that office and cleaning supplies have been by far the most significant business-to-business problem area; such telemarketing falls within the Commission's definition of deceptive telemarketing acts or practices.

60 Fed. Reg. 43842, 43861 (Aug. 23, 1995).

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

29. The Telemarketing Sales Rule requires telemarketers in outbound telephone calls to disclose promptly and in a clear and conspicuous manner the identity of the seller. 16 C.F.R. § 310.4(d)(1).

30. The Telemarketing Sales Rule also requires telemarketers in outbound telephone calls to disclose promptly and in a clear and conspicuous manner that the purpose of the call is to sell goods and services. 16 C.F.R. § 310.4(d)(2).

31. 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).

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

COUNT III

FALSE AND MISLEADING STATEMENTS TO INDUCE PAYMENT

33. In numerous instances, in connection with the telemarketing of nondurable office supplies, Defendants have made false or misleading statements to induce the consumer to pay for such goods, including, but not limited to, misrepresenting, directly or by implication, that (a) Defendants are the consumer's regular supplier and (b) the consumer ordered the goods that were shipped and/or billed to the consumer by Defendants, thereby violating 16 C.F.R. § 310.3(a)(4).

COUNT IV

FAILURE TO DISCLOSE THE IDENTITY OF THE SELLER

34. In numerous instances, in connection with the telemarketing of nondurable office supplies, Defendants in "outbound telephone calls," as that term is defined in the Telemarketing Sales Rule, 16 C.F.R. § 310.2(n), have failed to disclose promptly and in a clear and conspicuous manner their identity to the person receiving the call, thereby violating 16 C.F.R. § 310.4(d)(1).

COUNT V

FAILURE TO DISCLOSE SALES PURPOSE OF CALL

35. In numerous instances, in connection with the telemarketing of nondurable office supplies, Defendants in "outbound telephone calls," as that term is defined in the Telemarketing Sales Rule, 16 C.F.R. § 310.2(n), have failed to disclose promptly and in a clear and conspicuous manner to the person receiving the call that the purpose of the call was to sell goods, thereby violating 16 C.F.R. § 310.4(d)(2).

CONSUMER INJURY

36. Consumers throughout the United States have suffered 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 and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

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

2. Section 19 of the FTC Act, 15 U.S.C. § 57b, authorizes this Court to award such relief as is necessary to redress the injury to consumers or others resulting from Defendants' violations of the Telemarketing Sales Rule, including the rescission and reformation of contracts and the refund of monies.

3. The Court, in the exercise of its equitable jurisdiction, may award other ancillary relief to remedy injury caused by Defendants' violations.

PRAYER FOR RELIEF

Wherefore, Plaintiff requests that this Court, as authorized by 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 pursuant to its own equitable powers:

1. Award Plaintiff such temporary 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;

2. Permanently enjoin Defendants from violating the Telemarketing Sales Rule and the FTC Act, as alleged herein;

3. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the Telemarketing Sales Rule and the FTC Act, including, but not limited to, rescission of contracts, 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 equitable relief as the Court may determine to be just and proper.

DATE: _____, 2002

Respectfully submitted,

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