

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

FEDERAL TRADE COMMISSION,)	
)	
)	
Plaintiff)	
v.)	CIVIL ACTION NO.
)	
INTERNATIONAL DIRECT, INC.)	
)	
- and -)	COMPLAINT FOR INJUNCTIVE
)	AND OTHER RELIEF
AMERICAN SECURITY PRODUCTS, INC.)	
)	
- and -)	
)	
DANIEL T. CONNOLLY)	
)	
- and -)	
)	
DEBRA A. CONNOLLY)	
a/k/a Debra Levine Connolly)	
and/or Debra Levine)	
)	
- and -)	
)	
MAIER S. LEVINE)	
a/k/a Mike Levine)	
)	
- and -)	
)	
VIVIAN D. LEVINE,)	
)	
Defendants.)	

APRIL 16, 1997

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

1. The Commission 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, to secure preliminary and permanent injunctive relief, rescission of contracts, restitution, disgorgement, and other equitable relief for defendants’ unfair or deceptive acts and practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the FTC’s Trade Regulation Rule Concerning the Sale of Mail or Telephone Order Merchandise (the “Mail Order Rule” or “Rule”), 16 C.F.R. Part 435.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter under 28 U.S.C. §§ 1331, 1337(a), and 1345, and under 15 U.S.C. §§ 45(a)(1), 53(b) and 57b.

3. Venue in the United States District Court for the District of Connecticut is proper under 28 U.S.C. §§ 1391(b) and (c) and 15 U.S.C. § 53(b).

PLAINTIFF

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 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, as well as enforcement of the Mail Order Rule, 16 C.F.R. Part 435. The Commission is authorized to initiate federal district court proceedings to enjoin violations of the FTC Act in order to secure such equitable relief as may be appropriate in each case, and to obtain consumer redress. 15 U.S.C. §§ 53(b) and 57b.

DEFENDANTS

5. Defendant International Direct, Inc., (“International Direct”) is a Connecticut corporation with its office and principal place of business within this district at 2001 West Main Street, Suite 222, Stamford, Connecticut 06902. Upon information and belief, International Direct has done business as "American Security Products."

6. Defendant American Security Products, Inc. (“American Security”) is a Connecticut corporation with its office and principal place of business within this district at 2001 West Main Street, Stamford, Connecticut 06902. Upon information and belief, American Security has done business as "International Direct."

7. Defendant Daniel T. Connolly is an officer, director, and owner of International Direct and American Security. Individually or in concert with others, he directs, controls, formulates and/or participates in the acts and practices of the corporate defendants, including the acts and practices set forth in this complaint. He resides and transacts business in the District of Connecticut.

8. Defendant Debra A. Connolly is an officer, director and owner of International Direct and American Security. Individually or in concert with others, she directs, controls, formulates and/or participates in the acts and practices of the corporate defendants, including the acts and practices set forth in this complaint. In connection with the activities of the corporate defendants she has used the names Debra Connolly, Debra Levine, Debra Levine Connolly and Debra A. Connolly. She resides and transacts business in the District of Connecticut.

9. Defendant Maier S. Levine is an employee and officer of International Direct and of American Security. He has held himself out as vice president of the corporate defendants. Individually or in concert with others, he directs, controls, formulates and/or participates in the acts

and practices of the corporate defendants, including the acts and practices set forth in this complaint. In connection with the activities of the corporate defendants he has used the name Mike Levine. He resides and transacts business in the District of Connecticut.

10. Defendant Vivian D. Levine is an employee of International Direct and of American Security. Individually or in concert with others, she directs, controls, formulates and/or participates in the acts and practices of the corporate defendants, including the acts and practices set forth in this complaint. She resides and transacts business in the District of Connecticut.

COMMERCE

11. At all times relevant to this complaint, defendants have maintained a substantial course of business in the advertisement and sale of mail and telephone order merchandise in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS’ COURSE OF BUSINESS

12. Since at least March 1993, defendants have marketed, offered to sell, and sold a variety of products throughout the United States. Defendants advertise their products via inserts in major credit card bills pursuant to arrangements with the issuers of such credit cards. Defendants advertise small radios, kitchen utensils, plastic storage containers, pocket knives, electronic diaries, calculators, coin sorting devices, magazine subscriptions and other items at prices typically less than ten dollars per item.

13. Defendants’ advertisements include order forms for return by mail to defendants with the consumer’s personal check or credit card account number. Defendants’ advertisements also invite consumers to order the goods by telephone.

14. Defendants process consumers' payments on receipt. However, in numerous instances, after accepting a consumer's order and payment, defendants

(a) do not ship the ordered merchandise;

(b) ship merchandise that is delayed by more than thirty (30) days beyond defendants' receipt of a properly completed order and/or merchandise that is broken, damaged, and/or materially different from what the consumer ordered;

(c) do not notify the consumer of such shipping delays or failure to ship or give the consumer the opportunity to cancel the order;

(d) do not issue a refund to the consumer for undelivered or returned merchandise, even after representing to the consumer that such a refund has been issued or will be issued by a specific date; and

(e) supply false shipping and mailing dates or other false information to the consumer regarding delivery of goods or refund.

15. Upon information and belief, hundreds of thousands of consumers have paid defendants between approximately \$10 and \$100 each for defendants' advertised products and have received neither the items purchased from defendants nor refunds of their money. Numerous consumers have made purchases dating back as far as 1993, and have neither received merchandise nor refunds of their money.

DEFENDANTS' VIOLATIONS OF SECTION 5 OF THE FTC ACT

COUNT I

16. In numerous instances, in connection with the advertising, marketing and sale of goods, defendants have represented to consumers, expressly or by implication, that they shipped

ordered items or issued refunds on a specific date or that they would do so within a stated time period.

17. In truth and in fact, in numerous instances, defendants did not ship the ordered items or issue the refunds on the dates or within the times represented. In fact, in numerous instances, defendants did not ship the items or issue the refunds at all.

18. The representations described in Paragraph 16, above, were and are false and misleading and constitute deceptive acts or practices in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

THE MAIL ORDER RULE

19. The Commission promulgated the Mail Order Rule, 16 C.F.R. Part 435, on October 22, 1975, and revised the Mail Order Rule on September 21, 1993 to include merchandise ordered by telephone. The revised Rule became effective on March 1, 1994, and has remained in full force and effect since that time.

20. The Mail Order Rule requires that the seller follow certain procedures if merchandise ordered through the mail or by telephone will not be shipped within the applicable time (within thirty days after the order is placed, unless a different time is clearly and conspicuously stated in the solicitation). 16 C.F.R. § 435.1(a)(1).

21. The Mail Order Rule requires that, where there is a shipping delay, the seller must, prior to the expiration of the applicable time, either offer the buyer an option to agree to the delay or to cancel the order and receive a prompt refund (as defined in 16 C.F.R. § 435.2(f)), or deem the order canceled and make a prompt refund. 16 C.F.R. §§ 435.1(b)(1) and (c).

22. Pursuant to Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), and 16 C.F.R. § 435.1, violations of the Mail Order 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).

DEFENDANTS' VIOLATIONS OF THE MAIL ORDER RULE

COUNT II

23. In numerous instances, defendants have solicited orders for the sale of mail or telephone order merchandise when they had no reasonable basis to expect that they would be able to ship such merchandise within the time stated in the solicitation or, if no time was stated clearly and conspicuously in the solicitation, within thirty (30) days after receipt of a "properly completed order," as that term is defined in 16 C.F.R. § 435.2(d), thereby violating 16 C.F.R. § 435.1(a)(1).

COUNT III

24. In numerous instances, after soliciting orders for the sale of mail or telephone order merchandise and being unable to ship such merchandise within the applicable time as set forth in Section 435.1(a)(1) of the Mail Order Rule, 16 C.F.R. § 435.1(a)(1), defendants have violated the Mail Order Rule by:

a. failing to offer to the buyer, clearly and conspicuously and without prior demand, an option either to consent to a delay in shipping or to cancel the order and receive a prompt refund, thereby violating 16 C.F.R. § 435.1(b)(1); and

b. failing to offer to the buyer a prepaid means of exercising the buyer's options as described in 16 C.F.R. § 435.1(b)(1), thereby violating 16 C.F.R. § 435.1(b)(3).

COUNT IV

25. In numerous instances, defendants have failed to make a “prompt refund,” as that term is defined at 16 C.F.R. § 435.2(f), when such refunds were required under Section 435.1(c) of the Mail Order Rule, thereby violating 16 C.F.R. § 435.1(c).

CONSUMER INJURY

26. Consumers throughout the United States have suffered substantial monetary loss as a result of defendants’ unfair or deceptive acts or 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

27. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b) empowers this Court to grant injunctive relief and such other relief as the Court may deem appropriate to prevent and remedy violations of any provision of the law enforced by the Federal Trade Commission.

28. Section 19 of the FTC Act, 15 U.S.C. § 57b, authorizes this Court to grant such relief as the Court finds necessary to redress injury to consumers or other persons resulting from defendants’ violations of the Mail Order Rule.

PRAYER FOR RELIEF

WHEREFORE, plaintiff, the Federal Trade Commission requests that this 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;

2. Permanently enjoin defendants from violating Section 5(a) of the FTC Act and the Mail Order Rule, as alleged herein, in connection with the advertising, marketing, and selling of merchandise by mail or telephone order;

3. Award such relief as the Court finds necessary to redress consumers' injury resulting from defendants' violations of the FTC Act and the Mail Order Rule, including, but not limited to, rescission of contracts, refund of monies, and the disgorgement of ill-gotten gains; and

4. Award plaintiff the costs of bringing this action, as well as such other and additional relief as this Court may determine to be just and proper.

Respectfully submitted,

STEPHEN CALKINS
General Counsel

Virginia A. Davidson
Federal Bar No. oh0025773
Larissa L. Bungo
Federal Bar No. oh0066148
Attorneys for Plaintiff
Federal Trade Commission
668 Euclid Avenue, Suite 520-A
Cleveland, Ohio 44114
(216) 522-4210

Local Counsel:

MARK A. SHIFFRIN
STATE OF CONNECTICUT
Department of Consumer Protection

CHRISTOPHER F. DRONEY
UNITED STATES ATTORNEY

Anna M. Carbonaro, Esq.
Federal Bar No. ct07832
Department of Consumer Protection
165 Capitol Avenue
Hartford, Connecticut 06106
(860) 566-3983

David J. Sheldon
Federal Bar No. ct07997
P.O. Box 1824
New Haven, Connecticut 06508
(203) 773-2108