

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA

Case No. \_\_\_\_\_-CIV

03-8110

FILED by \_\_\_\_\_ D.C.  
DEC - 2 2003  
CLARENCE MADDOX  
CLERK U.S. DIST. CT.  
S.D. OF FLA. - W.P.B.

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

SUN SPECTRUM  
COMMUNICATIONS  
ORGANIZATION, INC.,  
dba Royal Credit Solutions,

NORTH AMERICAN  
COMMUNICATIONS  
ORGANIZATION, INC.,  
dba Imperial Consumer Services,

WWCI2002, INC.,  
dba Beneficial Client Care,

9106-7843 QUEBEC, INC.,  
dba Intelagent Media,

WILLIAM H. MARTELL,

TRACEY A. BASCOVE,

MITCHEL KASTNER,

RONALD CORBER,

and

JASON KASTNER,

Defendants.

CIV-COHN

MAGISTRATE JUDGE  
SNOW

COMPLAINT FOR PERMANENT INJUNCTION 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, the Telemarketing and Consumer Fraud and Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C. §§ 6101, *et seq.*, and Section 522(a) of the Gramm-Leach-Bliley Act (“GLB Act”), 15 U.S.C. § 6822(a), 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), the FTC’s Trade Regulation Rule entitled “Telemarketing Sales Rule” (“TSR”), 16 C.F.R. Part 310, and Section 521 of the GLB Act, 15 U.S.C. § 6821.

### **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 Southern District of Florida is proper under 15 U.S.C. § 53(b) and 28 U.S.C. § 1391(b), (c), and (d).

### **PLAINTIFF**

3. Plaintiff, 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 TSR, 16

C.F.R. Part 310, which prohibits deceptive or abusive telemarketing acts or practices. The FTC is also charged, under Section 522(a) of the GLB Act, 15 U.S.C. § 6822(a), with enforcing Section 521(a) of the GLB Act, 15 U.S.C. § 6821(a), which prohibits, among other things, any person from using false pretenses to obtain “customer information of a financial institution” from a consumer. The Commission is authorized to initiate federal district court proceedings by its own attorneys to enjoin violations of the FTC Act and the TSR, 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, 6102(c), and 6105(b).

### DEFENDANTS

4. Since 2002, Defendants, individually and in concert, and through mutual assistance of one another, have marketed, sold, and provided services related to purported advance-fee credit cards.

5. Defendant Sun Spectrum Communications Organization, Inc. (“Sun Spectrum”) does business as “Royal Credit Solutions.” Sun Spectrum is a Florida corporation and its principal place of business is 11300 U.S. Highway One, Suite 400, North Palm Beach, Florida. At all times material to this complaint, Sun Spectrum has directed or controlled the acts and practices described in this complaint. Sun Spectrum transacts or has transacted business in the Southern District of Florida.

6. Defendant North American Communications Organization, Inc. (“NACO”) does business as “Imperial Consumer Services.” NACO is a Florida corporation and its principal place of business is 772 U.S. Highway One, Suite 200, P.O. Box 14908, North Palm Beach, Florida. At all times material to this complaint, NACO has directed or controlled the acts and

practices described in this complaint. NACO transacts or has transacted business in the Southern District of Florida.

7. Defendant WWCI2002, Inc. (“WWCI”) does business as “Beneficial Client Care.” WWCI is a Florida corporation and its principal place of business is 233 Greenbriar Drive, P.O. Box 530842, Lake Park, Florida. At all times material to this complaint, WWCI has directed or controlled the acts and practices described in this complaint. WWCI transacts or has transacted business in the Southern District of Florida.

8. Defendant 9106-7843 Quebec, Inc. (“Quebec, Inc.”) does business as “Intelagent Media.” Quebec, Inc. is a Canadian corporation incorporated in the province of Quebec and its principal place of business is 666 Rue Sherbrooke Ouest, Bureau 601, Montreal, Quebec. At all times material to this complaint, Quebec, Inc. has directed or controlled the acts and practices described in this complaint. Quebec, Inc. transacts or has transacted business in the Southern District of Florida.

9. Defendant William H. Martell is the president of Sun Spectrum and NACO and the vice president of WWCI. He is the owner of Sun Spectrum, NACO, and WWCI. At all times relevant to this Complaint, acting alone or in concert with others, Martell has formulated, directed, controlled, or participated in the acts and practices of Sun Spectrum, NACO, and WWCI, including the acts and practices set forth in this Complaint. Martell resides in and transacts or has transacted business in the Southern District of Florida.

10. Defendant Tracey A. Bascove is the president of WWCI. At all times relevant to this Complaint, acting alone or in concert with others, Bascove has formulated, directed, controlled, or participated in the acts and practices of WWCI, including the acts and practices set

forth in this Complaint. Bascove resides in and transacts or has transacted business in the Southern District of Florida.

11. Defendant Mitchel Kastner is a principal of Quebec, Inc. At all times relevant to this Complaint, acting alone or in concert with others, Mitchel Kastner has formulated, directed, controlled, or participated in the acts and practices of Quebec, Inc., including the acts and practices set forth in this Complaint. Mitchel Kastner transacts or has transacted business in the Southern District of Florida.

12. Defendant Ronald Corber is the president of Quebec, Inc. At all times relevant to this Complaint, acting alone or in concert with others, Corber has formulated, directed, controlled, or participated in the acts and practices of Quebec, Inc., including the acts and practices set forth in this Complaint. Corber transacts or has transacted business in the Southern District of Florida.

13. Defendant Jason Kastner is the vice president of Quebec, Inc. At all times relevant to this Complaint, acting alone or in concert with others, Jason Kastner has formulated, directed, controlled, or participated in the acts and practices of Quebec, Inc., including the acts and practices set forth in this Complaint. Jason Kastner transacts or has transacted business in the Southern District of Florida.

#### COMMERCE

14. 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' COURSE OF CONDUCT

15. Since at least January 2002, Defendants have made unsolicited outbound telephone calls to consumers throughout the United States and offered to provide pre-approved, low interest Visa or MasterCard credit cards to those consumers who agreed to permit Defendants to debit their bank accounts for an advance fee, usually ranging from \$197.00 to \$300.00. Defendants have targeted their credit card offer to consumers with no credit or bad credit.

16. Defendants notify consumers that, in connection with a prior credit application, the consumers are eligible for a credit card. Although there has been no previous contact between Defendants and consumers, Defendants use the ruse of a preexisting credit application to help them obtain information about consumers' income and bank accounts and to frame the pitch as an offer for credit.

17. During the telephone calls to consumers, Defendants request that consumers provide them with bank account information, including bank routing information, as well as personal identifying information, including date of birth, mother's maiden name, and social security number.

18. Without providing consumers with the promised Visa or MasterCard credit cards, Defendants routinely debit the bank accounts of those consumers.

19. Instead of the promised Visa or MasterCard credit cards, Defendants often provide consumers with packets of coupons and materials that contain information about credit and finances, including how to obtain credit, repair credit, and avoid credit card fraud and financial scams, as well as lists of banks, not affiliated with Defendants, that purportedly accept

applications for credit cards.

Defendants do not provide consumers with, or arrange for consumers to receive, credit cards or other extensions of credit. Defendants are not authorized by Visa or MasterCard to issue credit cards.

21 Thousands of consumers have paid Defendants a fee ranging from \$197.00 to \$300.00 and have not received the credit cards promised by Defendants.

### **VIOLATIONS OF THE FEDERAL TRADE COMMISSION ACT**

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

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

### **COUNT I**

24. In numerous instances, in connection with the marketing of advance-fee credit cards, Defendants or their employees or agents have represented, expressly or by implication, that after paying Defendants a fee, consumers will receive, or are highly likely to receive, an unsecured major credit card, such as a Visa or MasterCard credit card.

25. In truth and in fact, in numerous instances, after paying Defendants a fee, consumers do not receive an unsecured major credit card, such as a Visa or MasterCard credit card.

Defendants' representations, as set forth in Paragraph 24 above, therefore, 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).

## THE TELEMARKETING SALES RULE

27. 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 (“Original TSR”). On January 29, 2003, the FTC issued a Statement of Basis and Purpose and an amended TSR (“Amended TSR”) with the amendments relevant to this Complaint becoming effective on March 31, 2003. 68 Fed. Reg. 4580, 4669. Defendants’ activities occurring prior to March 31, 2003 are governed by the Original TSR. Their activities occurring from March 31, 2003 to the present are governed by the Amended TSR.

28. Both the Original TSR and the Amended TSR prohibit 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).

29. Both the Original TSR and the Amended TSR also prohibit telemarketers and sellers from, among other things, requesting or receiving payment of any fee or consideration in advance of obtaining or arranging a loan or other extension of credit when the seller or telemarketer has guaranteed or represented a high likelihood of success in obtaining or arranging a loan or other extension of credit. 16 C.F.R. § 310.4(a)(4).

30. 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).



31 Defendants are “sellers” or “telemarketers” engaged in “telemarketing,” as those terms are defined in the Original TSR, 16 C.F.R. §§ 310.2(r), (t), and (u), and the Amended TSR, 16 C.F.R. §310.2(z), (bb), and (cc).

## VIOLATIONS OF THE TELEMARKETING SALES RULE

### COUNT II

32. In numerous instances, in connection with the telemarketing of advance-fee credit cards, Defendants or their employees or agents have misrepresented, expressly or by implication, that after paying Defendants a fee, consumers will, or are highly likely to, receive an unsecured major credit card, such as a Visa or MasterCard credit card.

33. Defendants have thereby violated Section 310.3(a)(2)(iii) of the Original TSR and the Amended TSR, 16 C.F.R. § 310.3(a)(2)(iii).

### COUNT III

34. In numerous instances, in connection with the telemarketing of advance-fee credit cards, Defendants or their employees or agents have made representations to consumers guaranteeing or representing a high likelihood of success in obtaining or arranging for the acquisition of an unsecured credit card, such as a Visa or MasterCard credit card. Having made those representations, Defendants or their employees or agents have requested and received payment of a fee from those consumers in advance of the consumers obtaining a credit card.

35. Defendants have thereby violated Section 310.4(a)(4) of the Original TSR and the Amended TSR, 16 C.F.R. § 310.4(a)(4).

## GRAMM-LEACH-BLILEY ACT

36. Section 521 of the Gramm-Leach-Bliley (“GLB”) Act, 15 U.S.C. § 6821, became effective on November 12, 1999, and has since remained in full force and effect. Section 521(a) of the GLB Act, 15 U.S.C. § 6821(a), prohibits any person from obtaining or attempting to obtain “customer information of a financial institution relating to another person . . . (2) by making a false, fictitious, or fraudulent statement or representation to a customer of a financial institution.”

37. Section 527(2) of the GLB Act, 15 U.S.C. § 6827(2), defines customer information of a financial institution as “any information maintained by or for a financial institution which is derived from the relationship between the financial institution and a customer of the financial institution and is identified with the customer.

38. Section 527(4) of the GLB Act, 15 U.S.C. § 6827(4), generally defines the term financial institution as “any institution engaged in the business of providing financial services to customers who maintain a credit, deposit, trust, or other financial account or relationship with the institution.

39. Section 522(a) of the GLB Act, 15 U.S.C. § 6822(a), empowers the Commission to enforce Section 521 of the GLB Act, 15 U.S.C. § 6821, “in the same manner and with the same power and authority as the Commission has under the Fair Debt Collection Practices Act [“FDCPA”] to enforce compliance with such Act.” Section 814 of the FDCPA, 15 U.S.C. § 1692l, provides that “[a]ll the functions and powers of the Commission under the [FTC Act] are available to the Commission to enforce compliance with” the FDCPA. Section 814 of the FDCPA also provides that a violation of the FDCPA “shall be deemed to be an unfair or deceptive act or practice in violation of” the FTC Act. Therefore, violations of Section 521 of

the GLB Act constitute unfair or deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

**VIOLATIONS OF THE GRAMM-LEACH-BLILEY ACT**

**COUNT IV**

40. In numerous instances, in connection with the marketing of various products or services, Defendants induce consumers to divulge their personal financial information by representing, expressly or by implication:

- A. that Defendants are affiliated with, or calling from or on behalf of, a bank, financial institution, or credit card company; or
- B. that Defendants already possess, and are merely verifying, consumers' prior credit applications.

41. In truth and in fact, in numerous instances,

- A. Defendants are not affiliated with, or calling from or on behalf of, a bank, financial institution, or credit card company; and
- B. Defendants do not already possess, and are not merely verifying, consumers' prior credit applications.

42. By making these false, fictitious, or fraudulent representations to customers of financial institutions, Defendants obtain customer information of a financial institution, including the type, account numbers, routing numbers, and identities of authorized signers of bank accounts.

43. Defendants' acts or practices violate Section 521 of the GLB Act, 15 U.S.C. § 6821. Therefore, Defendants' acts or practices 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).

### **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, the TSR, and the GLB Act, 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.

### **PRAAYER FOR RELIEF**

WHEREFORE, Plaintiff, the Federal Trade Commission, requests that this Court, as authorized by 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), Section 522(a) of the GLB Act, 15 U.S.C. § 6822(a), and pursuant to the Court's own equitable powers:

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

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, refund of monies paid, and 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,

DATED: 12/1/03

WILLIAM E. KOVACIC  
General Counsel



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