

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

FTN PROMOTIONS, INC., a Florida
corporation, dba Suntasia Inc., Suntasia
Marketing, Inc., and Capital Vacations,

GUARDIAN MARKETING SERVICES,
CORP., a Florida corporation, dba Guardian
Escrow Service,

STRATEGIA MARKETING, LLC, a Florida
limited liability company,

CO-COMPLIANCE, LLC, a Florida limited
liability company,

JPW CONSULTANTS, INC., a Florida
corporation, dba Freedom Gold, Variety!,
Credit Life, and Freedom Ring ULD,

TRAVEL AGENTS DIRECT, LLC, a Florida
limited liability company, dba Travel Agents
Go Direct, Floridaway, Travel Life Go Direct,
Florida Direct, and Lucid Long Distance,

AGENT'S TRAVEL NETWORK INC., a
Florida corporation, dba Florida Passport,

BAY PINES TRAVEL, INC., a Florida
corporation,

SUNTASIA PROPERTIES, INC., a Florida
corporation,

8:07CV1279-T 30TGW

Civ. No.

COMPLAINT FOR INJUNCTIVE
AND OTHER EQUITABLE
RELIEF

07 JUL 23 AM 9:37
U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA, FLORIDA

RECEIVED

BRYON W. WOLF,)
)
 ROY A. ELIASSON,)
)
 ALFRED H. WOLF,)
)
 DONALD L. BOOTH,)
)
 JEFFREY P. WOLF, and)
)
 JOHN LOUIS SMITH II,)
)
 Defendants.)
 _____)

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

1. 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. §§ 6101-6108, to secure preliminary and permanent injunctive relief, rescission of contracts and restitution, disgorgement of ill-gotten gains, and other equitable relief for Defendants’ deceptive and unfair 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” (“TSR”), 16 C.F.R. Part 310.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345, as well as pursuant to 15 U.S.C. §§ 45(a), 53(b), 57b, and

6105(b).

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

THE PARTIES

4. Plaintiff, the Federal Trade Commission, is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58. 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 TSR, 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 TSR and to secure such equitable relief, including restitution for injured consumers, as may be appropriate in each case. 15 U.S.C. §§ 53(b), 57b, 6102(c), and 6105(b).

5. Defendant FTN Promotions, Inc. (“FTN”) is a Florida corporation with its principal place of business located at 8751 Ulmerton Road, Largo, Florida 33771. FTN was incorporated in the State of Florida on February 26, 1996, and it does business under the registered business names “Suntasia Inc.,” “Suntasia Marketing, Inc.,” and “Capital Vacations.” FTN transacts or has transacted business in the Middle District of Florida and throughout the United States.

6. Defendant Guardian Marketing Services Corp. (“Guardian”) is a Florida corporation with its principal place of business located at 8751 Ulmerton Road, Largo,

Florida 33771. Guardian was incorporated in the State of Florida on July 18, 1996, and it does business under its own name and under the registered business name "Guardian Escrow Service." Guardian transacts or has transacted business in the Middle District of Florida and throughout the United States.

7. Defendant Strategia Marketing, LLC ("Strategia") is a Florida limited liability corporation with its principal place of business located at 8751 Ulmerton Road, Largo, Florida 33771. Strategia was incorporated in the State of Florida on December 6, 2006. Strategia transacts or has transacted business in the Middle District of Florida and throughout the United States.

8. Defendant Co-Compliance, LLC ("Co-Compliance") is a Florida limited liability corporation with its principal place of business located at 8751 Ulmerton Road, Largo, Florida 33771. Co-Compliance was incorporated in the State of Florida on January 8, 2007. Co-Compliance transacts or has transacted business in the Middle District of Florida and throughout the United States.

9. Defendant JPW Consultants, Inc. ("JPW") is a Florida corporation with its principal place of business located at 1400 SW 52nd Lane, Plantation, Florida 33317. JPW was incorporated in the State of Florida on April 27, 2004, and it does business under the registered business names "Freedom Gold," "Variety!," "Credit Life," and "Freedom Ring ULD." JPW transacts or has transacted business in the Middle District of Florida and throughout the United States.

10. Defendant Travel Agents Direct, LLC ("TAD") is a Florida limited liability

corporation with its principal place of business located at 11125 Park Boulevard, Suite 104-331, Seminole, Florida 33772. TAD was incorporated in the State of Florida on March 3, 2005, and it does business under the registered business names "Travel Agents Go Direct," "Floridaway," "Travel Life Go Direct," "Florida Direct," and "Lucid Long Distance." TAD transacts or has transacted business in the Middle District of Florida and throughout the United States.

11. Defendant Agent's Travel Network Inc. ("Agent's Travel") is a Florida corporation with its principal place of business located at 200 2nd Avenue South, Suite 413, St. Petersburg, Florida 33701. Agent's Travel was incorporated in the State of Florida on January 10, 2005, and it does business under the registered business name "Florida Passport." Agent's Travel transacts or has transacted business in the Middle District of Florida and throughout the United States.

12. Defendant Bay Pines Travel, Inc. ("Bay Pines") is a Florida corporation with its principal place of business located at 9653 Bay Pines Boulevard, St. Petersburg, Florida 33708. Bay Pines was incorporated in the State of Florida on June 11, 1992. Bay Pines transacts or has transacted business in the Middle District of Florida and throughout the United States.

13. Defendant Suntasia Properties, Inc. ("Suntasia Properties") is a Florida corporation with its principal place of business located at 8751 Ulmerton Road, Largo, Florida 33771. Suntasia Properties was incorporated in the State of Florida on March 23, 2000, and it owns, among other things, the property located at 8751 Ulmerton Road in Largo,

Florida from which Defendants telemarket to consumers located throughout the United States. Suntasia Properties transacts or has transacted business in the Middle District of Florida.

14. Defendant Bryon W. Wolf is an officer, director, and/or owner of Defendants FTN, Guardian, Strategia, Co-Compliance, Bay Pines, and Suntasia Properties. At all times material to this complaint, acting alone or in concert with others, he has formulated, directed, controlled, or participated in the acts and practices of the corporate Defendants, including the acts and practices set forth in this complaint. He resides and transacts, or has transacted, business in the Middle District of Florida.

15. Defendant Roy A. Eliasson is an officer, director, and/or owner of Defendants FTN, Guardian, Strategia, Co-Compliance, Bay Pines, and Suntasia Properties. At all times material to this complaint, acting alone or in concert with others, he has formulated, directed, controlled, or participated in the acts and practices of the corporate Defendants, including the acts and practices set forth in this complaint. He resides and transacts, or has transacted, business in the Middle District of Florida.

16. Defendant Alfred H. Wolf is an officer, director, and/or owner of Defendants FTN, Strategia, Bay Pines, and Suntasia Properties. At all times material to this complaint, acting alone or in concert with others, he has formulated, directed, controlled, or participated in the acts and practices of the corporate Defendants, including the acts and practices set forth in this complaint. He transacts or has transacted business in the Middle District of Florida.

17. Defendant Donald L. Booth is an officer, director, and/or owner of Defendant

Bay Pines and is the General Counsel of Defendants FTN, Guardian, Strategia, and Co-Compliance. At all times material to this complaint, acting alone or in concert with others, he has formulated, directed, controlled, or participated in the acts and practices of the corporate Defendants, including the acts and practices set forth in this complaint. He resides and transacts, or has transacted, business in the Middle District of Florida.

18. Defendant Jeffrey P. Wolf is an officer, director, and/or owner of Defendant JPW. At all times material to this complaint, acting alone or in concert with others, he has formulated, directed, controlled, or participated in the acts and practices of the corporate Defendants, including the acts and practices set forth in this complaint. He transacts or has transacted business in the Middle District of Florida.

19. Defendant John Louis Smith II is an officer, director, and/or owner of Defendant TAD. At all times material to this complaint, acting alone or in concert with others, he has formulated, directed, controlled, or participated in the acts and practices of the corporate Defendants, including the acts and practices set forth in this complaint. He resides and transacts, or has transacted, business in the Middle District of Florida.

20. Since at least 2003, Defendants have acted as a common enterprise while engaging in the deceptive and unfair acts and practices and other violations of law alleged below. They have shared officers, employees, and office locations, have commingled funds, are commonly controlled, and have engaged in a common scheme.

COMMERCE

21. 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 PRACTICES

22. Since at least 2003, Defendants have acted as a common enterprise for the purpose of promoting, marketing, offering to sell, and selling to consumers throughout the United States via telemarketing, memberships in discount buyer’s and travel clubs, as well as telecommunications services, under a series of different business and product names, including but not limited to: Capital Vacations, Distinct Advantage, Freedom Gold, Travel Agents Go Direct, Floridaway, Agent’s Travel Network, Florida Passport, Variety!, Credit Life, Travel Life Go Direct, Florida Direct, Freedom Ring ULD, and Lucid Long Distance.

23. Defendants provide all of their products and services to consumers on a free-to-pay conversion basis. This means that consumers receive the product or service free for an initial period but incur an obligation to pay if they do not take affirmative action to cancel before the end of the trial period. Defendants frequently sign up consumers to receive three of their products or services on a free-to-pay conversion basis during a single sales call.

24. Between them, Defendants have over 700 employees working in furtherance of their deceptive scheme. As described below, they have deceived millions of consumers across the country out of tens of millions of dollars. The acts and practices alleged herein also have generated thousands of consumer complaints to law enforcement agencies and the Better Business Bureau.

The Initial Sales Pitch

25. Defendants typically begin their sales calls by representing, expressly or by implication, that Defendants are affiliated with the consumer's bank. Defendants' telemarketers either tell consumers directly that Defendants are affiliated with their bank or indicate that they are calling "in regards to your banking account." In some instances, Defendants' telemarketers falsely claim to be calling because the consumer recently made a purchase from one of Defendants' marketing partners or affiliates. In either case, the telemarketers then explain that as a valued or preferred customer, the consumer will receive a series of free gifts in return for agreeing to review a "free trial" of one of Defendants' programs.

26. The free gifts that Defendants offer to induce consumers to review their programs include "\$100 in gas coupons," "\$400 in American airlines savings vouchers" (or sometimes simply "\$400 in airline savings vouchers"), and "two free nights of hotel accommodations." Defendants typically offer consumers some combination of two of these inducements. Defendants' telemarketers tell consumers that the gifts are theirs to keep even if they ultimately decide to cancel Defendants' program. Consumers often agree to review Defendants' program simply to obtain the gifts. Consumers learn only upon receiving Defendants' gifts that there are significant undisclosed conditions and restrictions on their use, rendering the gifts effectively worthless.

27. Although Defendants promise consumers "\$100 in gas coupons," they initially provide only a \$10 gas rebate voucher. The fine print on the voucher indicates that in order

to use it, consumers must purchase their own gas and send the receipt and voucher to Defendants, who purportedly will then deposit \$10 directly into the consumer's bank account and send the consumer another \$10 gas coupon. The voucher states that this process will continue for ten months because the maximum allowable rebate per month is \$10. When consumers learn that the "\$100 in gas coupons" they were promised actually are rebate vouchers that must be used over a ten-month period, they often do not even attempt to use the vouchers. In many instances, those consumers who do attempt to use the vouchers do not receive a rebate from Defendants.

28. Consumers promised "\$400 in American airlines savings vouchers" receive instead airfare rebate vouchers that are not specific to American Airlines. The vouchers indicate that in order to receive \$400 in rebates, consumers must themselves purchase at least \$2,000 in airline tickets, as a \$100 rebate is available only on a ticket purchase of \$500 or \$550. The maximum allowable rebate on a single round-trip ticket is \$100. In order to receive their rebates, consumers must purchase their own tickets from a travel agency controlled by Defendants and then submit the rebate voucher, along with a boarding pass, within thirty days of traveling. When consumers learn the actual terms and conditions of the rebate vouchers, they often do not even attempt to use them. In many instances, those consumers who do attempt to use the vouchers do not receive a rebate from Defendants.

29. Defendants sometimes tell consumers who are promised "two free nights of hotel accommodations" that the accommodations are available at any of Defendants' hotels "coast-to-coast." Yet consumers subsequently receive information from Defendants

indicating that they may travel to one of only three destinations: “Las Vegas, Nevada; Branson, Missouri; or Williamsburg, West Virginia [sic].” They also learn that they must pay a \$50 deposit upon making their reservation, which allegedly is refundable, and that they must attend a timeshare presentation during their stay or they will be charged the full cost of the accommodations. Since at least 2006, this two night hotel stay has been provided and fulfilled by Defendant Bay Pines.

30. Defendants use these “gifts” to induce consumers to accept a free trial membership in one of their discount buyer’s or travel clubs. Defendants’ initial offer usually has a fourteen-day free trial period, and Defendants typically tell consumers, expressly or by implication, that the trial period will begin to run only after consumers receive a packet of information about Defendants’ program in the mail. In most instances, Defendants focus their telemarketing pitch on the “free gifts” and tell consumers little or nothing about the program they are being asked to review.

31. The cost of the first program Defendants pitch to consumers typically is \$19.95 per month with an initial activation fee of \$40. In numerous instances, however, Defendants’ telemarketers fail to clearly and conspicuously disclose these costs. The telemarketers instead emphasize to consumers that they will not be billed anything “today.”

32. Even in those instances where the cost of the program is clearly and conspicuously disclosed, Defendants’ telemarketers assure consumers that they will never be billed if they call to cancel the program before the expiration of the trial period. The telemarketers represent, expressly or by implication, that canceling the program before the

expiration of the free trial period will be easy for consumers to accomplish. Defendants' telemarketers also represent that even if consumers cancel the program, they are entitled to keep Defendants' "free gifts," so the consumers "can't lose!"

Obtaining Consumers' Bank Account Numbers

33. Defendants then attempt to obtain consumers' bank account numbers by representing, expressly or by implication, that they already have that information. Having already falsely represented that they are affiliated with the consumer's bank or a merchant from which the consumer recently made a purchase, Defendants now tell consumers that they are going to pull up their information to confirm that everything is correct. In many instances, Defendants' telemarketers have not yet told consumers in a manner they are likely to notice and understand that there is any charge for Defendants' program. Consumers therefore often believe that their bank account number is being verified solely to confirm their eligibility to receive Defendants' "free gifts."

34. After asking consumers for the name and location of their bank, Defendants use that information to obtain the bank's routing number. They then provide that publicly available routing number to the consumer and ask the consumer to "verify" that the number is correct. Once the consumer has confirmed the routing number, Defendants' telemarketers ask consumers to "verify" the next set of numbers that appear on their checks, which is the account number. Many consumers disclose their bank account numbers, believing that they are simply verifying information Defendants already have. Those consumers who are reluctant to "verify" their account number often are told that Defendants simply are trying to

confirm that the account is still active and that the consumer is not buying or being billed anything today.

35. At the point in the telemarketing call at which Defendants seek to obtain the consumer's bank account information, Defendants' telemarketers in many instances have not disclosed truthfully, in a clear and conspicuous manner: (1) the fact that the consumer's account will be charged unless the consumer takes affirmative action to avoid the charge; (2) the date the charge will be submitted for payment; and (3) the specific steps the consumer must take to avoid the charge.

36. In most instances, for example, Defendants' telemarketers do not tell consumers when a charge will be submitted for payment, nor do they disclose the dates on which the free trial period begins and ends. Although most consumers are told or assume that the trial period will not begin until they receive Defendants' materials in the mail, Defendants actually begin the free trial period on or about the date of the sales call, thus leaving consumers with fewer than the promised number of days to review Defendants' materials.

37. Although Defendants sometimes tell consumers that they must call a toll-free number to cancel Defendants' program, Defendants in most instances do not provide consumers with that number or any other telephone number during the telemarketing call. As a result, consumers often have no way of contacting Defendants until they receive Defendants' informational package in the mail.

38. After convincing consumers to "verify" their bank account numbers,

Defendants then record the remainder of the call. During their recorded verifications, Defendants' telemarketers ask consumers to repeat the account number they just "provided" and indicate that the fee for Defendants' program will be billed "to the checking account you just supplied to us." Even in the recorded portion of the call, however, Defendants' telemarketers still do not tell consumers the date on which their accounts will be billed or the telephone number they should use in canceling the program.

Upsells

39. After recording a verification relating to the initial program, Defendants then offer consumers two "upsells." "Upselling" refers to the practice of soliciting the purchase of goods or services following an initial transaction during a single telephone call. Defendants' first "upsell" generally consists either of five nights of Florida hotel accommodations or another type of buyer's club membership. Defendants typically offer the first "upsell" for only a seven-day trial period, after which consumers are billed \$149 unless they call to cancel. Defendants' second "upsell" consists of a telecommunications package, generally unlimited long-distance with voicemail, that is offered for a free trial period of twenty-one or thirty days, after which consumers are charged a monthly fee of \$49.95 unless they call Defendants to cancel.

40. In numerous instances, in the course of offering these "upsells" to consumers, Defendants' telemarketers introduce the "upsell" as a special bonus, available only to the consumer as a new "VIP member." In many instances, Defendants' telemarketers do not clearly and conspicuously disclose to consumers the identity of the seller or that the purpose

of the “upsell” portion of the call is to sell additional goods and services.

41. In the course of offering these “upsells” to consumers, Defendants’ telemarketers use the billing information that consumers provided earlier for the underlying transaction to charge consumers for the “upsells.” In doing so, Defendants’ telemarketers often do not obtain from consumers the last four digits of the account number to be charged.

42. In numerous instances, in the course of offering their “upsells” to consumers, Defendants’ telemarketers fail to disclose truthfully, in a clear and conspicuous manner: (1) the fact that the consumer’s account will be charged unless the consumer takes affirmative action to avoid the charge; (2) the date the charge will be submitted for payment; and (3) the specific steps the consumer must take to avoid the charge.

43. As in the initial transaction, Defendants do not disclose to consumers when the charges for the “upsells” will be submitted for payment, nor do they disclose the dates on which the free trial period begins and ends. Again, most consumers are told or assume that the free trial period will not begin until they receive informational materials on the “upsells” in the mail, but Defendants also begin the free trial period for the “upsells” on the date of the sales call, thus leaving consumers with fewer than the promised number of days to review the “upsell” materials.

44. Although Defendants sometimes tell consumers that they must call a toll-free number to cancel the “upsell” programs, Defendants in most instances do not provide consumers with that number or any other telephone number during the telemarketing call. Defendants’ telemarketers also do not disclose to consumers that in order to cancel the two

“upsells” and the initial program, they must call three different telephone numbers.

45. In many instances, Defendants’ telemarketers do not obtain the consumer’s express agreement to review and subsequently to be charged for the “upsells.” In some instances, Defendants’ telemarketers do not require the consumer to expressly agree to the offer but end with wording such as “so we will rush this out to you as well. O.K.” In other instances, consumers do not even recall being presented with the “upsell” offers, perhaps because Defendants’ telemarketers read through the “upsell” scripts so quickly that consumers do not understand that they are being asked to make additional purchases and to authorize additional charges.

Mailings, Charges, Cancellations, and Refunds

46. In numerous instances, Defendants then mail out informational packages relating to each program the consumer has been signed up to review. Each of the packages contains a “welcome letter” that discloses for the first time the specific dates on which the trial period ends and the consumer’s bank account will be charged. The “welcome letter” also finally provides consumers with the telephone number they must call to cancel the program. Consumers often learn upon reviewing Defendants’ “welcome letter” that their accounts will be charged in just a few days, meaning that they do not have the promised trial period in which to review Defendants’ program.

47. In numerous instances, consumers do not agree to accept trial memberships in one or more of Defendants’ programs and do not recall receiving informational materials containing necessary information about cancellation or the effective dates of the trial

memberships. In many instances, consumers first learn of Defendants' trial memberships when Defendants withdraw money from their bank accounts. In some instances, consumers may receive a package from Defendants but do not open it because the package appears to be unsolicited promotional or sales material from an unfamiliar source.

48. Defendants sometimes charge consumers for one or more of their programs even after consumers have called the appropriate toll-free number and communicated their desire to cancel Defendants' program within the free trial period. When consumers call Defendants to complain of these unauthorized charges, they are told that Defendants have no record of their cancellations.

49. In other instances, consumers may successfully cancel one of Defendants' programs, but Defendants fail to disclose that they still may be charged for another of Defendants' programs and that they must call another telephone number in order to cancel that program.

50. In most instances, Defendants refuse to grant refund requests over the telephone, regardless of the reason for the request. They instead require anyone seeking a refund to mail a written request to one of a number of mail drop addresses used for this purpose. Yet even when a consumer makes a written request for a refund, Defendants often fail to issue the requested refund.

51. Finally, although Defendants promise consumers that they may keep and use the "free gifts" of gas, airline, and accommodation vouchers even if they cancel Defendants' programs, Defendants only allow consumers to use the "gifts" if they maintain their program

memberships.

Defendants Illegally Purchased “Full-Data Leads”

52. In most instances, Defendants attempt to obtain consumers’ bank account information by leading consumers to believe that they already have it. In some instances, however, Defendants already possess consumers’ bank account numbers prior to making their telemarketing calls. Defendants obtain this information by purchasing “full data leads” from one or more list brokers. “Full data leads” typically include one or more of the following: (1) consumers’ bank account and routing information, or (2) consumers’ credit card numbers, security codes, and expiration dates. The “full data leads” purchased by Defendants typically include at least consumers’ telephone numbers and unencrypted account information. Defendants use these “full data leads” in telemarketing their products and services to consumers.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

53. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits unfair or deceptive acts or practices in or affecting commerce. Misrepresentations or omissions of material facts constitute deceptive acts or practices prohibited by Section 5(a). An unfair act or practice is one that causes or is likely to cause substantial injury to consumers that is not reasonably avoidable by consumers themselves and that is not outweighed by countervailing benefits either to consumers or competition.

COUNT ONE

Misrepresentation of Material Facts

54. In numerous instances, in the course of telemarketing their products and services, Defendants have represented, expressly or by implication, that:

- a. they are calling from, on behalf of, or are otherwise affiliated with the consumer's bank or other third party with whom the consumer has conducted business;
- b. they already have the consumer's bank routing and account numbers;
- c. consumers will have a designated period of time in which to review Defendants' program before incurring any charges;
- d. the free trial period will not begin to run until consumers have received Defendants' informational material in the mail;
- e. they will honor consumers' requests to cancel their participation in Defendants' programs;
- f. consumers will be able to easily cancel their participation in Defendants' programs; and
- g. consumers are entitled to keep and to use the gas coupons, airline savings vouchers, or "two free nights of hotel accommodations" even if they cancel Defendants' program.

55. In truth and in fact, in numerous instances, Defendants:

- a. are not calling from, nor on behalf of, nor are they otherwise affiliated with the consumer's bank or other third party with whom the consumer has conducted

business;

- b. do not already have the consumer's bank routing and account numbers;
- c. do not provide consumers with the designated period of time in which to review Defendants' programs before incurring any charges;
- d. begin the free trial period on or about the date of the sales call, not on the date consumers receive Defendants' informational materials in the mail;
- e. do not honor consumers' requests to cancel their participation in Defendants' programs;
- f. make it difficult for consumers to cancel their participation in Defendants' programs; and
- g. do not permit consumers who cancel Defendants' program to use the gas coupons, airline savings vouchers, or "two free nights of hotel accommodations."

56. Therefore, the representations set forth in Paragraph 54 are false and misleading and constitute deceptive acts and practices in violation of Section 5(a) of the FTC Act.

COUNT TWO

Failure to Disclose Material Facts

57. In numerous instances, in the course of telemarketing their products and services, Defendants have represented, expressly or by implication, that consumers will have a specified trial period in which to review Defendants' programs without incurring any charges.

58. In numerous instances, Defendants fail to disclose, or disclose adequately, to consumers the material terms and conditions of the offer, including:

- a. the fact that the consumer's account will be charged unless the consumer takes affirmative action to avoid the charge;
- b. that consumers' checking account information will be used to debit their bank accounts to pay for Defendants' programs;
- c. the cost of Defendants' programs;
- d. the dates the charges to consumers' checking accounts will be submitted for payment;
- e. the dates that the trial period begins and ends; and
- f. the specific steps consumers must take in order to cancel Defendants' programs, including that consumers must cancel each of Defendants' programs by calling a separate telephone number.

59. In light of the representation set forth in Paragraph 57, the failure of Defendants to disclose, or disclose adequately, this material information is a deceptive act or practice in violation of Section 5(a) of the FTC Act.

COUNT THREE

Failure to Disclose Terms and Conditions of "Free Gift" Inducements

60. In numerous instances, in order to induce consumers to agree to review one of their programs and to provide their bank account number, Defendants have represented, expressly or by implication, that they will provide consumers with two "free gifts," including

some combination of the following: “\$100 in gas coupons,” “\$400 in American airlines savings vouchers” or “airline savings vouchers,” or “two free nights of hotel accommodations.”

61. In numerous instances, Defendants fail to disclose, or disclose adequately, to consumers material conditions, limitations, and restrictions on the use of these “gifts” that greatly limit their value and usefulness.

62. In light of the representation set forth in Paragraph 60, the failure of Defendants to disclose, or disclose adequately, this material information is a deceptive act or practice in violation of Section 5(a) of the FTC Act.

COUNT FOUR

Unauthorized Billing

63. In numerous instances, Defendants have caused consumers’ bank accounts to be debited without first obtaining consumers’ express informed consent.

64. Defendants’ practice of causing consumers’ bank accounts to be debited without obtaining consumers’ express informed consent causes or is likely to cause substantial injury to consumers that consumers cannot reasonably avoid and that is not outweighed by countervailing benefits either to consumers or competition.

65. Therefore, Defendants’ practice, as described in Paragraph 63, is unfair and violates Section 5(a) of the FTC Act.

THE TELEMARKETING SALES RULE

66. In the Telemarketing Act, 15 U.S.C. §§ 6101-6108, Congress directed the FTC to prescribe rules prohibiting abusive and deceptive telemarketing acts or practices. On August 16, 1995, the Commission promulgated the Telemarketing Sales Rule (“TSR”), 16 C.F.R. Part 310, which became effective on December 31, 1995. On January 29, 2003, the FTC amended the TSR by issuing a Statement of Basis and Purpose and the final amended TSR. 68 Fed. Reg. 4580, 4669. Except for specific provisions not relevant to this action, the amended TSR became effective on March 31, 2003.

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

68. The TSR prohibits sellers and telemarketers from misrepresenting, directly or by implication, that they are affiliated with, or endorsed or sponsored by, any person or government entity. 16 C.F.R. § 310.3(a)(2)(vii).

69. As of March 31, 2003, the TSR requires that sellers and telemarketers who make offers that include a negative option feature to disclose truthfully, in a clear and conspicuous manner, before a consumer pays for the goods or services offered, all material terms and conditions of the negative option feature, including, but not limited to, the following: (1) the fact that the consumer’s account will be charged unless the consumer takes affirmative action to avoid the charge; (2) the date(s) the charge(s) will be submitted for payment; and (3) the specific steps the consumer must take to avoid the charge(s). 16 C.F.R. § 310.3(a)(1)(vii).

70. The TSR's Statement of Basis and Purpose makes clear that free-to-pay conversion offers such as those made by Defendants constitute offers with a "negative option feature" under the TSR. 68 Fed. Reg. at 4594 & 4603. The Statement of Basis and Purpose also indicates that the required disclosures must be made before asking for any credit card, bank account, or other information that will or could be used to obtain payment. *Id.* at 4599.

71. The TSR prohibits sellers and telemarketers from misrepresenting, directly or by implication, 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).

72. The TSR requires telemarketers in an outbound telephone call or an upsell to disclose truthfully, promptly, and in a clear and conspicuous manner the following information:

- a. the identity of the seller;
- b. that the purpose of the call is to sell goods or services; and
- c. the nature of the goods or services.

16 C.F.R. § 310.4(d)(1), (2) and (3).

73. The TSR further prohibits sellers and telemarketers from causing billing information to be submitted for payment without the consumer's express verifiable authorization. When an audio recording of the consumer's express oral authorization is used to satisfy this requirement, that recording must evidence clearly the consumer's authorization of payment for the goods or services that are the subject of the telemarketing transaction and the consumer's receipt of all of the following information, among other information:

- a. the number of debits, charges, or payments (if more than one);
- b. the date(s) the debit(s), charge(s), or payment(s) will be submitted for payment; and
- c. a telephone number for customer inquiry that is answered during normal business hours.

16 C.F.R. § 310.3(a)(3)(ii).

74. As of March 31, 2003, the TSR also provides that it is an abusive telemarketing act or practice for a seller or telemarketer to cause “billing information to be submitted for payment, directly or indirectly, without the express informed consent” of the consumer. 16 C.F.R. § 310.4(a)(6). In order to establish the consumer’s “express informed consent” in a telemarketing transaction that involves preacquired account information and a free-to-pay conversion feature, the seller or telemarketer must: “obtain from the customer, at a minimum, the last four (4) digits of the account number to be charged” and also “obtain from the customer his or her express agreement to be charged for the goods or services and to be charged using the account number” for which the last four digits were provided. 16 C.F.R. § 310.4(a)(6)(i)(A) and (B).

75. Finally, as of March 31, 2003, the TSR prohibits any seller or telemarketer from “[d]isclosing or receiving, for consideration, unencrypted consumer account numbers for use in telemarketing.” 16 C.F.R. § 310.4(a)(5).

76. 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 TSR 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).

VIOLATIONS OF THE TELEMARKETING SALES RULE

COUNT FIVE

Misrepresenting Affiliation with Consumer's Bank or Other Third Party

77. In numerous instances, in the course of telemarketing their products and services, Defendants have misrepresented, directly or by implication, that they are calling from, on behalf of, or are otherwise affiliated with the consumer's bank or some other third party with whom the consumer has conducted business.

78. Defendants' practice as alleged in Paragraph 77 is a deceptive telemarketing practice that violates Section 310.3(a)(2)(vii) of the TSR, 16 C.F.R. § 310.3(a)(2)(vii).

COUNT SIX

Failure to Disclose Material Terms of Negative Option Feature

79. In numerous instances, in the course of telemarketing their products and services, Defendants have failed to disclose truthfully, in a clear and conspicuous manner, before a consumer pays for the goods or services offered, all material terms and conditions of the negative option feature, including, but not limited to, the following: (1) the fact that the consumer's account will be charged unless the consumer takes affirmative action to avoid the charge; (2) the date(s) the charge(s) will be submitted for payment; and (3) the specific steps the consumer must take to avoid the charge(s).

80. Defendants' practice as alleged in Paragraph 79 is a deceptive telemarketing

practice that violates Section 310.3(a)(1)(vii) of the TSR, 16 C.F.R. § 310.3(a)(1)(vii).

COUNT SEVEN

Misrepresenting Terms of Cancellation Policy

81. In numerous instances, in the course of telemarketing their products and services, Defendants have misrepresented, directly or by implication, a material aspect of the nature or terms of their cancellation policy, including that:

- a. consumers will have a designated period of time in which to review and to cancel Defendants' program before incurring any charges;
- b. the free trial period will not begin to run until consumers have received Defendants' informational material in the mail;
- c. they will honor consumers' requests to cancel their participation in Defendants' programs;
- d. consumers will be able to easily cancel their participation in Defendants' programs; and
- e. consumers are entitled to keep and to use the gas coupons, airline savings vouchers, or "two free nights of hotel accommodations" even if they cancel Defendants' program.

82. Defendants' practice as alleged in Paragraph 81 is a deceptive telemarketing practice that violates Section 310.3(a)(2)(iv) of the TSR, 16 C.F.R. § 310.3(a)(2)(iv).

COUNT EIGHT

Failure to Make Required Oral Disclosures

83. In numerous instances, in the course of telemarketing their products and services, Defendants have failed to disclose promptly and in a clear and conspicuous manner to the person receiving the call:

- a. that the purpose of the call is to sell goods or services; and
- b. the nature of the goods or services.

84. Defendants' practice as alleged in Paragraph 83 is an abusive telemarketing practice that violates Section 310.4(d)(2) and (3) of the TSR, 16 C.F.R. § 310.4(d)(2) and (3).

COUNT NINE

Lack of Express Verifiable Authorization

85. In numerous instances, in the course of telemarketing their products and services, Defendants have caused billing information to be submitted for payment without the consumer's express verifiable authorization.

86. Defendants' practice as alleged in Paragraph 85 is a deceptive telemarketing practice that violates Section 310.3(a)(3) of the TSR, 16 C.F.R. § 310.3(a)(3).

COUNT TEN

Lack of Express Informed Consent to be Billed

87. In numerous instances, in the course of telemarketing their products and services, Defendants have caused billing information to be submitted for payment without the express informed consent of the consumer.

88. Defendants' practice as alleged in Paragraph 87 is an abusive telemarketing practice that violates Section 310.4(a)(6) of the TSR, 16 C.F.R. § 310.4(a)(6).

COUNT ELEVEN

Purchase of Unencrypted Consumer Account Numbers

89. On numerous occasions since March 31, 2003, Defendants have received, for consideration, unencrypted consumer account numbers for use in telemarketing.

90. Defendants' acts and practices as alleged in Paragraph 89 are abusive telemarketing acts and practices that violate Section 310.4(a)(5) of the TSR, 16 C.F.R. § 310.4(a)(5).

CONSUMER INJURY

91. 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 practices. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers, enrich themselves unjustly, and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

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

93. Section 19 of the FTC Act, 15 U.S.C. § 57b, and Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b), authorize 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 TSR, including the rescission and reformation of contracts, and the refund of money.

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

PRAYER 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), and pursuant to its 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;

2. Enter a permanent injunction to prevent future violations of the FTC Act and TSR 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 TSR, including, but not limited to, rescission of contracts, the refund of monies paid, and the disgorgement of ill-gotten gains; and


4. Award plaintiff the costs of bringing this action, as well as such other

additional relief as the Court may determine to be just and proper.

Respectfully Submitted,

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General Counsel

DATED: July 23, 2007



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