

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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FEDERAL TRADE COMMISSION, et ano.,

Plaintiffs,

-against-

00 Civ. 6315 (LAK)

THE CRESCENT PUBLISHING GROUP, et al.,

Defendants.
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MEMORANDUM ON AMOUNT OF BOND

LEWIS A. KAPLAN, *District Judge*.

The parties are at loggerheads concerning the amount of the preliminary injunction bond. The FTC and the State Attorney General start from the premise, which is unchallenged, that defendants net billings, after credits and chargebacks, were at least \$196.4 million, that all of these "net billings appear to be ill-gotten and should be disgorged," and that the bond of \$42 million they seek therefore would most conservative. Plaintiffs, ignore, however, the strong likelihood that at least some significant part of the net billings were made to customers who either were not deceived in the first place or who effectively ratified the transactions.

Defendants also take an unreasonable position, asserting that the amount of the bond should be fixed at \$5 million. They argue that almost all of their billings were to customers who either were satisfied or received value for their payments, that existing bond and letter of credit arrangements in favor of Visa to cover chargebacks are available to fund and relief appropriate here, and that their net worth of \$16 million and \$2 million of cash security deposits held by third parties also could be available in the event of a disgorgement order.

Notwithstanding plaintiffs' almost certain exaggeration of the extent of defendants' financial exposure here, and bearing in mind the preliminary stage of these proceedings, it is reasonable to suppose that defendants could be called upon to refund tens of millions of dollars. Defendants' reliance on the security that have posted in favor of Visa and other third parties is misplaced because there is no assurance that any disgorgement order would take the form of mandatory credits to credit card accounts. Defendants' net worth, given the size of the potential exposure, is not a source of great comfort.


In all the circumstances, the Court has fixed the amount of the bond at \$10 million.

SO ORDERED.

Dated: February 16, 2001

Copies mailed 2/16/01
Chambers of Judge Kaplan





Lewis A. Kaplan
United States District Judge