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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DEC 02 2002

MICHAEL V.
CLERK, U.S. DISTRICT COURT

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

Civil Action No.

PACIFIC FIRST BENEFIT, LLC,
KEY NATION BENEFIT, LLC,
FIRST FEDERAL BENEFIT, LLC,
FEDERAL CREDIT SERVICES, LIMITED, and
ALEX ORPHANOU, individually and as an officer
of Pacific First Benefit, LLC, Key Nation
Benefit, LLC, First Federal Benefit, LLC, and
Federal Credit Services, Limited,

Defendants.

02C 8678

JUDGE NORGIE

MAGISTRATE JUDGE
GERALDINE SOAT BROWN

COMPLAINT FOR INJUNCTIVE 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, and the Telemarketing and Consumer Fraud and
Abuse Prevention Act ("Telemarketing Act"), 15 U.S.C. §§ 6101, *et seq.*, 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), and the FTC's Trade Regulation Rule entitled "Telemarketing Sales Rule," 16 C.F.R. Part 310.

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 Northern District of Illinois is proper under 15 U.S.C. § 53(b) and 28 U.S.C. § 1391(b), (c), and (d).

PLAINTIFF

3. Plaintiff, the Federal Trade Commission, 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 Telemarketing Sales Rule, 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 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, 6102(c), and 6105(b).

DEFENDANTS

4. Defendant Pacific First Benefit, LLC ("Pacific First"), is a limited liability corporation registered in Delaware with its offices and principal place of business located at 164 Eglinton Avenue East, Suite 200, Toronto, Ontario M4P 1G4. Pacific First transacts or has transacted business in the Northern District of Illinois.

5. Defendant Key Nation Benefit, LLC (“Key Nation”), is a limited liability corporation registered in Delaware with its offices and principal place of business located at 164 Eglinton Avenue East, Suite 200, Toronto, Ontario M4P 1G4. Key Nation transacts or has transacted business in the Northern District of Illinois.

6. Defendant First Federal Benefit, LLC (“First Federal”), is a limited liability corporation registered in Delaware with its offices and principal place of business located at 164 Eglinton Avenue East, Suite 200, Toronto, Ontario M4P 1G4. First Federal transacts or has transacted business in the Northern District of Illinois.

7. Defendant Federal Credit Services, Limited (“Federal Credit Services”), is a corporation registered in Delaware with its offices and principal place of business located at 164 Eglinton Avenue East, Suite 200, Toronto, Ontario M4P 1G4. Federal Credit Services transacts or has transacted business in the Northern District of Illinois.

8. Defendant Alex Orphanou is the owner and principal of Pacific First, Key Nation, First Federal, and Federal Credit Services. At all times relevant to this Complaint, acting alone or in concert with others, Alex Orphanou has formulated, directed, controlled, or participated in the acts and practices of Pacific First, Key Nation, First Federal, and Federal Credit Services, including the acts and practices set forth in this Complaint. Alex Orphanou transacts or has transacted business in the Northern District of Illinois.

COMMERCE

9. 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

10. Since at least February 1999, defendants have made unsolicited outbound telephone calls to consumers throughout the United States and falsely offered to provide pre-approved, low interest credit cards to those consumers who agreed to permit defendants to debit their bank accounts for an advance fee ranging from \$175.00 to \$199.00. Defendants also state that the credit cards have no annual fee. Defendants have targeted consumers with no credit or bad credit for their credit card offer.

11. During the telephone calls to consumers, defendants request bank account information, including bank routing information.

12. Defendants routinely debit the bank accounts of consumers, who have provided bank account information and agreed to pay fees with bank account debits, in advance of providing those consumers with the Visa or MasterCard credit cards promised during the telephone calls.

13. Instead of providing consumers with Visa or MasterCard credit cards, the Defendants provide consumers with packets of 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 information about discount shopping services and vacation certificates.

14. The defendants' packets also include an application for consumers to fill out with their personal information. Consumers who fill out the applications and send them back to the defendants do not receive Visa or MasterCard credit cards from the defendants.

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

16. Thousands of consumers have paid defendants a fee ranging from \$175.00 to \$199.00 each and have not received the credit cards promised by defendants.

VIOLATIONS OF THE FEDERAL TRADE COMMISSION ACT

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

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

COUNT I

19. In numerous instances, in connection with the marketing of advance fee credit cards, defendants or their employees or agents have represented, directly 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.

20. 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.

21. Therefore, the representation set forth in Paragraph 19 is false and misleading and constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

THE TELEMARKETING SALES RULE

22. The Commission promulgated the Telemarketing Sales Rule pursuant to Section 6102(a) of the Telemarketing Act, 15 U.S.C. § 6102(a). The Rule became effective on December 31, 1995.

23. The FTC Telemarketing Sales Rule prohibits 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).

24. The Telemarketing Sales Rule also prohibits 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).

25. 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).

26. Defendants are “sellers” or “telemarketers” engaged in “telemarketing,” as those terms are defined in the FTC Telemarketing Sales Rule. 16 C.F.R. §§ 310.2(r), (t) & (u).

VIOLATIONS OF THE TELEMARKETING SALES RULE

COUNT II

27. In numerous instances, in connection with the telemarketing of advance fee credit cards, defendants or their employees or agents have misrepresented, directly 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.

28. Defendants have thereby violated Section 310.3(a)(2)(iii) of the Telemarketing Sales Rule, 16 C.F.R. § 310.3(a)(2)(iii).

COUNT III

29. In numerous instances, in connection with the telemarketing of advance fee credit cards, defendants or their employees or agents have requested and received payment of a fee in advance of consumers obtaining a credit card when defendants have guaranteed or represented 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, for such consumers.

30. Defendants have thereby violated Section 310.4(a)(4) of the Telemarketing Sales Rule, 16 C.F.R. § 310.4(a)(4).

CONSUMER INJURY

31. 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, the defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

32. 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 and the Telemarketing Sales Rule, 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.

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 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 and the Telemarketing Sales Rule, 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.

Dated: December 2, 2002

Respectfully Submitted,

WILLIAM E. KOVACIC
General Counsel


KAREN D. DODGE
JOHN C. HALLERUD
Attorneys for Plaintiff
Federal Trade Commission
55 East Monroe Street., Suite 1860
Chicago, Illinois 60603
(312) 960-5634 (telephone)
(312) 960-5600 (facsimile)