

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

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

GROWTH PLUS INTERNATIONAL MARKETING,
INC., a Canadian Corporation, also d/b/a
GROWTH POTENTIAL INTERNATIONAL, GPI,
and GPIM,

GAINS INTERNATIONAL MARKETING, INC.,
a Canadian Corporation, also d/b/a
GAINS WEALTH INTERNATIONAL,

PLOTO COMPUTER SERVICES, INC.,
a Canadian Corporation,

VICTOR THIRUCHELVAM,

JESSIE NADARAJAH,

KANDAN NADARAJAH,

ARUDCHELVAM NAGAMUTHU, and

JULIE TURGEON,

Defendants.

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CLERK, U.S. DISTRICT COURT

Civil Action No.

00C 7886

JUDGE ASPEN

MAGISTRATE JUDGE SCHENKIER

COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF

Plaintiff, the Federal Trade Commission ("FTC" or "the 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 *et seq.*, to secure temporary, preliminary, and permanent injunctive relief, restitution, rescission 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

2. 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.

3. 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

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. 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, 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), 57b, and 6105(b).

DEFENDANTS

5. Defendant Growth Plus International Marketing, Inc. is incorporated in Ontario, Canada. Its offices and principal places of business are located at 5200 Finch Avenue East, Scarborough, Ontario, Canada, M1S 4Z5 and 3300 McNicoll Avenue East, Scarborough, Ontario, Canada, M1V 2L2. Growth Plus International Marketing, Inc. also transacts business using a registered business name of Growth Potential International, and the names "GPI" and "GPIM" (hereinafter collectively referred to as "Growth"). Growth has transacted business in the Northern District of Illinois and throughout the United States.

6. Defendant Gains International Marketing, Inc. is incorporated in Ontario, Canada. Its offices and principal places of business are located at 5200 Finch Avenue East, Scarborough, Ontario, Canada, M1S 4Z5 and 3300 McNicoll Avenue East, Scarborough, Ontario, Canada, M1V 2L2. Gains International Marketing, Inc. also transacts business using a registered business name of Gains Wealth International (hereinafter collectively referred to as "Gains"). Gains has transacted business in the Northern District of Illinois and throughout the United States.

7. Defendant Ploto Computer Services, Inc. ("Ploto") is incorporated in Ontario, Canada. Its offices and principal places of business are located at 5200 Finch Avenue East, Scarborough, Ontario, Canada, M1S 4Z5 and 3300 McNicoll Avenue East, Scarborough, Ontario, Canada, M1V 2L2. Ploto has transacted business in the Northern District of Illinois and throughout the United States.

8. Defendant Victor Thiruchelvam is one of the owners and principals of Growth, Gains, and Ploto. At all times relevant to this Complaint, acting alone or in concert with others, Victor Thiruchelvam has participated directly in, or has had authority to control the acts and

practices of Growth, Gains, and Ploto, including the acts and practices set forth in this Complaint.

9. Defendant Jessie Nadarajah is one of the owners and principals of Growth, Gains, and Ploto. At all times relevant to this Complaint, acting alone or in concert with others, Jessie Nadarajah has participated directly in, or has had authority to control the acts and practices of Growth, Gains, and Ploto, including the acts and practices set forth in this Complaint.

10. Defendant Kandan Nadarajah is one of the owners and principals of Growth, Gains, and Ploto. At all times relevant to this Complaint, acting alone or in concert with others, Kandan Nadarajah has participated directly in, or has had authority to control the acts and practices of Growth, Gains, and Ploto, including the acts and practices set forth in this Complaint.

11. Defendant Arudchelvam Nagamuthu is one of the owners and principals of Growth, Gains, and Ploto. At all times relevant to this Complaint, acting alone or in concert with others, Arudchelvam Nagamuthu has participated directly in, or has had authority to control the acts and practices of Growth, Gains, and Ploto, including the acts and practices set forth in this Complaint.

12. Defendant Julie Turgeon is one of the owners and principals of Growth, Gains, and Ploto. At all times relevant to this Complaint, acting alone or in concert with others, Julie Turgeon has participated directly in, or has had authority to control the acts and practices of Growth, Gains, and Ploto, including the acts and practices set forth in this Complaint.

13. Since at least 1998, Defendants Growth, Gains, and Ploto have acted as a common enterprise to sell foreign lottery tickets or interests in foreign lottery tickets to United States residents.

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 1997 and continuing thereafter, Defendants have deceptively and illegally telemarketed tickets or interests in foreign lottery tickets to United States residents. They have often targeted the elderly, contacting their victims by telephone and soliciting them to participate in foreign lotteries (e.g., Canadian) by purchasing lottery tickets or interests in lottery tickets. Defendants have solicited consumers to purchase individual tickets and group tickets in which the consumer buys a share in a ticket or series of tickets. The lottery packages sold by Defendants range in price from \$39 to almost \$600, depending upon how many individual plays and group plays are purchased, as well as upon how many weeks of draws the consumer purchases. In order to induce consumers to make purchases, Defendants have told consumers that their chances of winning the lottery are very good if they play with the Defendants. The Defendants have also related stories of other United States consumers who have played the lottery with Defendants and won.

16. During telephone solicitations, Defendants fail to disclose that it is illegal for them to sell and for United States consumers to purchase Canadian lottery tickets or interests in

Canadian lottery tickets. Further, Defendants implicitly tell consumers that it is legal for Defendants to sell and for consumers to purchase the lottery packages. Defendants tell consumers that they are sponsored by, affiliated with, or registered with the Canadian government to sell the lottery tickets.

17. Consumers are generally encouraged to pay respondents over the telephone by credit card or check draft. After the consumers make their payments to the Defendants, they do not receive the actual lottery tickets. Instead, they usually receive a printout in the mail of lottery numbers purportedly purchased for them by Defendants. Consumers typically do not hear back from Defendants as to whether they have won or lost. Rather, the next contact consumers receive from Defendants is usually the next time the Defendants' telemarketers call to solicit consumers for another purchase.

SECTION 5 OF THE FTC ACT

18. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), provides that "unfair or deceptive acts or practices in or affecting commerce, are hereby declared unlawful."

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

VIOLATIONS OF SECTION 5 OF THE FTC ACT

COUNT I

20. In numerous instances, in connection with telemarketing foreign lottery tickets or interests in foreign lottery tickets, Defendants have represented, expressly or by implication, that it is legal for Defendants to sell foreign lottery tickets or interests in foreign lottery

tickets to consumers in the United States and for consumers in the United States to purchase foreign lottery tickets or interests in foreign lottery tickets.

21. In truth and in fact, Defendants have failed to disclose to consumers that the sale and trafficking in foreign lotteries is a violation of federal criminal law.

22. In light of the representations made in Paragraph 20, above, the Defendants' failure to disclose this material fact is deceptive, and violates Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT II

23. In numerous instances in connection with telemarketing foreign lottery tickets or interests in foreign lottery tickets, Defendants have represented, expressly or by implication, that it is legal for Defendants to sell foreign lottery tickets or interests in foreign lottery tickets to consumers in the United States and for consumers in the United States to purchase foreign lottery tickets or interests in foreign lottery tickets.

24. In truth and in fact, it is not legal for Defendants to sell foreign lottery tickets or interests in foreign lottery tickets to consumers in the United States and for consumers in the United States to purchase foreign lottery tickets or interests in foreign lottery tickets.

25. Therefore, the representations set forth in Paragraph 23 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 FTC TELEMARKETING SALES RULE

26. In the Telemarketing Act, 15 U.S.C. § 6101 *et seq.*, 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, 16 C.F.R. Part 310, with a Statement of Basis and Purpose, 60 Fed. Reg. 43842 (August 23, 1995). The Rule became effective on December 31, 1995.

27. Defendants are "sellers" or "telemarketers" engaged in "telemarketing," as those terms are defined in the Telemarketing Sales Rule, 16 C.F.R. §§ 310.2(r), (t) and (u).

28. The Telemarketing Sales Rule prohibits sellers and telemarketers "[b]efore a customer pays for goods or services offered, [from] failing to disclose, in a clear and conspicuous manner . . . [a]ll material restrictions, limitations, or conditions to purchase, receive, or use the goods or services that are the subject of the sales offer." 16 C.F.R. § 310.3(a)(1)(ii).

29. The Telemarketing Sales Rule also prohibits sellers and telemarketers from "[m]aking a false or misleading statement to induce any person to pay for goods or services." 16 C.F.R. § 310.3(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).

VIOLATIONS OF THE FTC TELEMARKETING SALES RULE

COUNT III

31. In numerous instances in connection with the telemarketing of foreign lottery tickets or interests in foreign lottery tickets, Defendants have failed to disclose that the sale and trafficking in foreign lotteries is a crime in the United States. Defendants have thereby violated Section 310.3(a)(1)(ii) of the Telemarketing Sales Rule, 16 C.F.R. § 310.3(a)(1)(ii).

COUNT IV

32. In numerous instances in connection with the telemarketing of foreign lottery tickets or interests in foreign lottery tickets, Defendants have made false or misleading representations to consumers that it is legal for Defendants to sell foreign lottery tickets or interests in foreign lottery tickets to consumers in the United States and for consumers in the United States to purchase foreign lottery tickets or interests in foreign lottery tickets. Defendants have thereby violated Section 310.3(a)(4) of the Telemarketing Sales Rule, 16 C.F.R. § 310.3(a)(4).

CONSUMER INJURY

33. 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, Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public.

THIS COURT'S POWER TO GRANT RELIEF

34. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), authorizes this Court to issue a permanent injunction against Defendants' for violations of the FTC Act and, in the exercise of its equitable jurisdiction, to order such ancillary relief as a temporary restraining order, preliminary injunction, consumer redress, rescission, restitution, and disgorgement of profits resulting from Defendants' unlawful acts or practices, and other remedial measures.

35. 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 the Court to grant to the FTC such relief as

the Court finds necessary to redress injury to consumers or other persons resulting from Defendants' violations of the Telemarketing Sales Rule, including the rescission and reformation of contracts and the refund of monies.

36. This 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, and 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 certain Defendants' 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 18, 2000

Respectfully Submitted,

DEBRA A. VALENTINE
General Counsel



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