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U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

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

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

4086465 CANADA, INC., a corporation d/b/a
International Protection Center and Consumers
Protection Center,

ALAIN CHIKHANI, a/k/a Allain Chikani,
individually and as an owner, officer, director,
and/or administrator of the corporate defendant,
and

RAFIK CHIKANI,
individually and as an owner, officer, director,
and/or administrator of the corporate defendant,

Defendants.

1 : 04CV1351

JUDGE POLSTER

Case No.

Judge

MAG. JUDGE VECCHIARELLI
Mag. Judge

COMPLAINT FOR
INJUNCTIVE AND OTHER
EQUITABLE RELIEF

Plaintiff Federal Trade Commission ("Commission"), by its undersigned attorneys,
alleges:

1. The Commission 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 preliminary and permanent injunctive relief, rescission of contracts, restitution, disgorgement of ill-gotten gains, and other equitable relief against the Defendants for engaging in deceptive acts or practices in connection with the sale of goods or services that purport to protect against telemarketing fraud, in violation of FTC Act Section 5(a), 15 U.S.C. § 45(a), the Commission’s Trade Regulation Rule entitled “the Telemarketing Sales Rule,” 16 C.F.R. Part 310, and Section 521 of the GLB Act, 15 U.S.C. § 6821.

JURISDICTION AND VENUE

2. This court has jurisdiction over this matter 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 Ohio is proper under 15 U.S.C. § 53(b), and 28 U.S.C. § 1391 (b), (c), and (d).

PLAINTIFF

4. Plaintiff 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 Telemarketing Sales Rule (“TSR”), 16 C.F.R. Part 310, which prohibits deceptive or abusive telemarketing practices. In addition, the Commission enforces Section 521(a) of the GLB Act, which prohibits, among other things, the use of false pretenses to obtain from a customer, “customer information of a financial institution.” 15 U.S.C. § 6821(a).

5. The Commission may initiate federal district court proceedings by its own attorneys to enjoin violations of any law enforced by the Commission and to secure such equitable relief as may be appropriate in each case, including restitution for injured customers. 15 U.S.C. §§ 53(b), 57b and 6105(b).

DEFENDANTS

6. Defendant 4086465 Canada, Inc., dba Consumers Protection Center and International Protection Center (“IPC”), is a Canadian corporation with its offices and principal place of business located at 666 Sherbrooke, Ste 900, Montreal, Quebec H3A 1E7. IPC transacts or has transacted business in the Northern District of Ohio.

7. At all times material to this Complaint, Defendant Alain Chikhani (a/k/a Allain Chikani) has been an administrator, officer, owner, and/or director of IPC. Acting alone or in concert with others, he has formulated, directed, controlled, or participated in the acts and practices set forth in this Complaint. Defendant Chikhani transacts or has transacted business in the Northern District of Ohio.

8. At all times material to this Complaint, Defendant Rafik Chikani has been an administrator, officer, and/or director of IPC. Acting alone or in concert with others, he has formulated, directed, controlled, or participated in the acts and practices set forth in this Complaint. Defendant Chikani transacts or has transacted business in the Northern District of Ohio.

COMMERCE

9. At all times material hereto, Defendants have maintained a substantial course of business, in the offering for sale and sale of purported telemarketing-protection goods or

services, that has been in or affecting commerce as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

**THE COMMISSION’S NATIONAL DO NOT CALL REGISTRY AND
DEFENDANTS’ BUSINESS ACTIVITIES**

10. In the Telemarketing Act, 15 U.S.C. § 6101 *et seq.*, Congress directed the Commission to prescribe rules prohibiting deceptive and abusive telemarketing acts or practices. In 1995, the Commission promulgated the TSR (“Original TSR”). 60 FR 43864 (Aug. 23 1995). The Original TSR became effective December 31, 1995. In early 2003, the Commission amended the Telemarketing Sales Rule, 16 C.F.R. Part 310, by publishing in the Federal Register the final amended Rule (“Amended TSR”) and an accompanying Statement of Basis and Purpose. 68 Fed. Reg. 4579 (text of the amendments is found at 68 Fed. Reg. 4669). The amendments relevant to this Complaint became effective on March 31, 2003. Defendants’ activities occurring between December 31, 1995, and March 30, 2003, are regulated by the Original TSR. Their activities occurring from March 31, 2003, to the present are governed by the Amended TSR.

11. Among other things, the Amended TSR provides for the establishment of a National Do Not Call Registry to be maintained by the Commission (“Commission Registry”), which permits consumers to place their telephone numbers on one central registry of numbers not to be called by telemarketers subject to the Commission’s jurisdiction. In its Statement of Basis and Purpose, the Commission determined that third parties should not be permitted to register names on the Commission Registry. Indeed, the FTC has designed procedures to ensure that telephone numbers are not entered in bulk into the National Do Not Call Registry. *See* 68 Fed. Reg. 4639 (Jan. 29, 2003).

12. The only exceptions the Commission made to the prohibition on third party registration were to agree to add to the Commission Registry lists of subscribers compiled by state governments pursuant to state do-not-call laws, in order to harmonize federal and state do-not-call laws, and to offer to include in the Commission Registry the established do-not-call list maintained by the Direct Marketing Association. *Id.* at 4641.

13. Since at least February 2003, and continuing thereafter, Defendants have engaged in a plan, program or campaign from their base in Canada to sell goods or services that purport to protect customers from telemarketing fraud by preventing telemarketing calls and/or unauthorized charges against customers' bank accounts.

14. Defendants, directly or through telemarketers, use a variety of misrepresentations concerning their goods and services in calls to residents of the United States, in order to convince their predominantly elderly or infirm targets to disclose their bank information so that Defendants can debit their accounts.

15. Defendants often misrepresent that they can list the customer with the Commission Registry or an unidentified national do-not-call list. Sometimes Defendants promise a device to attach to their customers' telephones that would prevent telemarketing calls. Defendants also often promise to shield their customers' bank accounts from fraudulent withdrawals.

16. However, Defendants do not deliver on these promises. Many customers, from whom Defendants take their typical \$399 charge, receive nothing in return. Those who do, find that they do not get the promised protection from telemarketing calls and unauthorized bank charges. Instead, they get a number of poorly produced brochures and a cheap, simple device that does not prevent calls, but merely plays a message asking callers not to call again.

17. Sometimes, Defendants misrepresent that they are or are associated with the Commission, another government agency, or with the customer's bank. Defendants often use the pretense that they are acting in an official capacity to get bank account information without disclosing that they are really soliciting a \$399 transaction.

18. Defendants use two methods of collecting customers' money. They either print out a demand draft that operates like a check but does not require the customer's signature, or they cause the money to be transferred to Defendants' account electronically. In some instances, Defendants already have the customer's account information when the victim is called, and use the call merely to confirm the information and to try to get misinformed consent to a debit.

19. Defendants often misrepresent the cost of the goods or services being offered. Sometimes, they state or imply that the goods or services will be free, but then take \$399 from their victim. Other times, they misrepresent the total cost by falsely promising a \$500 credit to offset the \$399 charge, or they misrepresent that they will debit the \$399 in a series of small, monthly increments. Defendants also sometimes take their victims' money even when the victim explicitly rejects any transaction. In these various ways, Defendants fail to disclose important terms of the transaction and therefore fail to get proper authorization.

20. Defendants often try to support their claim that a valid transaction has occurred by asking their customers a series of questions and recording the responses. Defendants do not obtain written authorization for any transactions.

LEGAL CLAIMS

The FTC Act

21. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits "deceptive" acts or practices in or affecting commerce. Misrepresentations or omissions of material fact constitute

“deceptive” acts or practices pursuant to Section 5(a) of the FTC Act.

The Telemarketing Sales Rule

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

23. Among other things, both versions of the Telemarketing Sales Rule prohibit sellers and telemarketers from misrepresenting, directly or by implication, “[t]he total costs to purchase, receive or use . . . any goods or services that are the subject of a sales offer.” 16 C.F.R. § 310.3(a)(2)(i).

24. Both versions of the Telemarketing Sales Rule prohibit sellers and telemarketers from causing billing information to be submitted for payment, or collecting or attempting to collect certain types of payment for goods or services, directly or indirectly, without the customer’s express verifiable authorization. 16 C.F.R. § 310.3(a)(3). In particular, this provision in the Original TSR requires sellers and telemarketers to obtain express verifiable authorization for any transaction involving negotiable paper, such as a check or draft, drawn on a person’s checking, savings, or similar account. In the Amended TSR, the provision requires express verifiable authorization unless the method of payment is a credit or debit card subject to relevant statutory protections. In either case, the provision sets out a number of specific conditions and disclosures that must be satisfied before any such authorization is considered express and verifiable.

25. Both versions of the Telemarketing Sales Rule also prohibit sellers and telemarketers from misrepresenting an affiliation with, or endorsement or sponsorship by, any person or government entity. 16 C.F.R. § 310.3(a)(2)(vii).

26. 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).

The GLB Act

27. Section 521 of the GLB Act, 15 U.S.C. § 6821, became effective on November 12, 1999, and remains in full force and effect. Section 521(a) of the GLB Act, 15 U.S.C. § 6821(a), prohibits any person from “obtain[ing] or attempt[ing] 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.”

28. The GLB Act 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.” 15 U.S.C. § 6827(2).

29. The GLB Act empowers the Commission to enforce Section 521 of the GLB Act “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.” 15 U.S.C. § 6822(a). The FDCPA, in turn, provides that “[a]ll of the functions and powers of the Commission under the . . . [FTC Act] are available to the Commission to enforce compliance.” 15 U.S.C. § 1692*l*. A violation of the FDCPA “shall be deemed an unfair or deceptive act or practice in violation of” the FTC Act. 15 U.S.C. § 1692*l*. Therefore, violations of Section 521 of the GLB Act, 15 U.S.C. § 6821, constitute unfair or deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT I: FTC ACT

MISREPRESENTATIONS AS TO DEFENDANTS' GOODS AND SERVICES

30. In numerous instances, in connection with the telemarketing of purported telemarketing-protection goods or services, Defendants have represented, expressly or by implication, that:

- A. Defendants will place customers on the Commission Registry or a separate national do-not-call list;
- B. Defendants' goods or services will prevent telemarketing calls; or
- C. Defendants' goods or services will prevent unauthorized bank account withdrawals.

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

- A. Defendants cannot and do not place customers on the Commission Registry or a separate national do-not-call list;
- B. Defendants' goods or services cannot and do not prevent telemarketing calls; and
- C. Defendants' goods or services cannot and do not prevent unauthorized bank account withdrawals.

32. Therefore, the representations set forth in Paragraph 30 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).

COUNT II: TELEMARKETING SALES RULE

MISREPRESENTING THE COSTS OF DEFENDANTS' GOODS OR SERVICES

33. In numerous instances, in connection with the telemarketing of purported telemarketing-protection goods or services, Defendants have misrepresented, directly or by

implication, the total costs to purchase, receive, or use their goods or services, thereby violating 16 C.F.R. § 310.3(a)(2)(i).

COUNT III: TELEMARKETING SALES RULE

BILLING WITHOUT EXPRESS VERIFIABLE AUTHORIZATION

34. In numerous instances, in connection with the telemarketing of purported telemarketing-protection goods or services, Defendants have caused billing information to be submitted for payment, or collected or attempted to collect payment for goods or services, directly or indirectly, via transactions covered by the Original or Amended TSR, without the customer's express verifiable authorization, thereby violating 16 C.F.R. § 310.3(a)(3).

COUNT IV: TELEMARKETING SALES RULE

MISREPRESENTING AFFILIATION WITH ANY PERSON OR GOVERNMENT

35. In numerous instances, in connection with the telemarketing of purported telemarketing-protection goods or services, Defendants have misrepresented, directly or by implication, an affiliation with, or endorsement or sponsorship by, the customer's financial institution or a government entity, thereby violating 16 C.F.R. § 310.3(a)(2)(vii).

COUNT V: GRAMM-LEACH-BLILEY ACT

“PRETEXTING” VIOLATIONS

36. In numerous instances, in connection with the marketing of purported telemarketing-protection goods or services, Defendants induce customers to divulge their customer information of a financial institution by representing, expressly or by implication, that:

- A. Defendants are affiliated with, or calling from or on behalf of, a bank or government entity; or
- B. Defendants are not seeking a sales transaction and will not use the information obtained to debit customers' accounts.

37. In truth and in fact,

- A. Defendants are not affiliated with, or calling from or on behalf of, a bank or government entity; and
- B. Defendants are seeking a sales transaction and will use the information obtained to debit customers' accounts.

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

39. Therefore, Defendants' acts or practices set forth in Paragraph 36 violate Section 521 of the GLB Act, 15 U.S.C. § 6821, and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

CONSUMER INJURY

40. Consumers throughout the United States have suffered substantial monetary loss as a result of Defendants' unlawful acts or 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 and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

1. 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 the FTC Act. The Court, in the exercise of its equitable jurisdiction, may award other ancillary relief, including but not limited to, rescission of contracts, restitution, and the disgorgement of ill-gotten gains, to prevent and remedy injury caused by Defendants' law violations.

2. Section 19 of the FTC Act, 15 U.S.C. § 57b, authorizes this Court to award such relief as is necessary to redress the injury to consumers or others resulting from Defendants' violations of the Telemarketing Sales Rule, including the rescission and reformation of contracts and the refund of monies.

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

PRAYER FOR RELIEF

Wherefore, Plaintiff Commission requests that this Court, pursuant to 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 of the GLB Act, 15 U.S.C. § 6822, and the Court's 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. Permanently enjoin Defendants from violating the FTC Act, the Telemarketing Sales Rule, and the GLB Act, as alleged herein;

3. Award such equitable relief as the Court finds necessary to redress injury to consumers resulting from the Defendants' violations of the FTC Act, the Telemarketing Sales

Rule, and the GLB Act, including but not limited to, rescission of contracts, restitution, and the disgorgement of ill-gotten gains by the Defendants; and

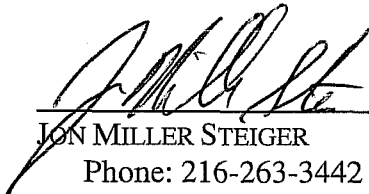
4. Award Plaintiff the costs of bringing this action, as well as such other and additional equitable relief as the Court may determine to be just and proper.

DATE: July 19, 2004

Respectfully submitted,

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