

1 **JURISDICTION AND VENUE**

2 2. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C.
3 §§ 1331, 1337(a), and 1345 and 15 U.S.C. §§ 53(b), 57b, 6102(c), and 6105(b).

4 3. Venue in the Central District of California is proper under §§ 28 U.S.C. § 1391(b) and
5 (c), and 15 U.S.C. § 53(b).

6 **THE PARTIES**

7 4. Plaintiff, the Federal Trade Commission, is an independent agency of the United States
8 Government created by statute. 15 U.S.C. § 41 et seq. The Commission is charged, inter alia, with
9 enforcement of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive
10 acts or practices in or affecting commerce. The Commission also enforces the Telemarketing Sales
11 Rule, which prohibits deceptive and abusive telemarketing. The Commission is authorized to initiate
12 federal district court proceedings to enjoin violations of the FTC Act in order to secure such equitable
13 relief as is appropriate in each case, and to obtain consumer redress. 15 U.S.C. §§ 53(b) and 57b.

14 5. Defendant Mag-Topia, Inc. ("MTI") is a California corporation, with its office and
15 principal place of business located at 2098-A South Grand Avenue, Santa Ana, California 92707.
16 MTI transacts or has transacted business in this District.

17 6. Defendant Robert Florida is president and sole owner of defendant MTI. At all times
18 material to this complaint, acting alone or in concert with others, he has formulated, directed,
19 controlled or participated in the acts and practices of the corporate defendant, including the acts and
20 practices set forth in this complaint. He transacts or has transacted business in this District.

21 **COMMERCE**

22 7. At all times relevant to this complaint, the defendants have maintained a substantial
23 course of trade in the offering for sale and sale, through telemarketing, of prize promotions, in or
24 affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

1 **DEFENDANTS' BUSINESS PRACTICES**

2 8. Since at least 1996, Defendants MTI and Robert Flarida have operated a magazine
3 promotion scheme in the guise of a prize promotion. The defendants' salespeople telephone
4 consumers, many of them senior citizens, throughout the United States and notify them that they have
5 been selected to receive or have won a valuable prize. The MTI salespeople typically inform these
6 consumers that the prize is one of the following: (1) a new automobile, such as a Ford Escort; (2) a
7 cash award ranging from \$1,500 to \$15,000; (3) a "big screen" television; or (4) a "diamond" watch
8 claimed to be worth over \$1,000. MTI's salespeople represent to consumers that all of the prizes are
9 valuable.

10 9. MTI's salespeople instruct consumers that in order to receive their prize, they must
11 pay a processing fee and send a check or money order to MTI by overnight mail. The amount MTI's
12 salespeople request as a processing fee ranges from \$250.00 to \$900.00. In numerous instances,
13 MTI's salespeople instruct consumers to write "magazines" or "magazine package" on the memo
14 lines of their checks or money orders. They also instruct consumers to call MTI to confirm that they
15 have sent their checks or money orders. As a result of MTI salespeople's oral assurances that
16 consumers have been selected to receive or have won a valuable prize, consumers agree to send the
17 requested amount of money. Once a consumer calls to confirm that he or she has sent the required
18 check or money order, the MTI representative asks for the air bill number for the package containing
19 the check or money order.

20 10. Most, if not all, consumers who send money to MTI receive a magazine order form
21 from MTI that requests consumers to select a number of magazines from a pre-printed list. In
22 numerous instances, however, consumers do not receive the selected magazines.

23 11. In numerous instances, consumers do not receive any of the promised prizes from
24 MTI. If consumers do receive a prize from MTI, it is the "diamond" watch. If consumers request an
25 alternative prize, MTI offers them one of the following alternative awards: a vase, skin care
26 treatments, a seven-piece cookware set, a rice cooker, or an oriental rug.

1 **VIOLATIONS OF SECTION 5 OF THE FTC ACT**

2 **COUNT I**

3 12. In numerous instances in connection with their telemarketing of prize promotions, the
4 defendants represent, expressly or by implication, that consumers who participate in the defendants'
5 promotions will receive a prize worth more than the amount that consumers pay to the defendants.

6 13. In truth and in fact, in numerous instances, consumers who participate in the
7 defendants' promotions do not receive a prize worth more than the amount consumers pay to the
8 defendants.

9 14. Therefore, the representations set forth in Paragraph 12 are false and misleading and
10 constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

11 **VIOLATIONS OF THE TELEMARKETING SALES RULE**

12 15. In the Telemarketing Act, 15 U.S.C. § 6101, *et seq.*, Congress directed the FTC to
13 prescribe rules prohibiting deceptive and abusive telemarketing acts or practices. On August 16,
14 1995, the FTC promulgated the Telemarketing Sales Rule, 16 C.F.R. Part 310, with a Statement of
15 Basis and Purpose, 60 Fed. Reg. 43842 (Aug. 23, 1995). The Rule became effective December 31,
16 1995.

17 16. Defendants are "sellers" or "telemarketers" engaged in "telemarketing" of a "prize
18 promotion" as those terms are defined in the Telemarketing Sales Rule. 16 C.F.R. § 310.2(r), (t), (u),
19 and (q).

20 17. The Telemarketing Sales Rule prohibits telemarketers and sellers from failing to
21 disclose, in a clear and conspicuous manner and before a customer pays for goods or services in any
22 prize promotion, (1) the odds of being able to receive the prize or the factors used in calculating the
23 odds, (2) that no purchase or payment is required to win a prize or to participate in a prize
24 promotion, and (3) the no purchase/no payment method of participating in a prize promotion. 16
25 C.F.R. § 310.3(a)(1)(iv).

26 18. The Telemarketing Sales Rule's Statement of Basis and Purpose explains that, "[t]he
27 Commission intends that the disclosures be made before the consumer sends funds to a seller or
28

1 telemarketer or divulges to a telemarketer or seller credit card or bank account information. Thus, a
2 telemarketer or seller who fails to provide the disclosures until the consumer's payment information is
3 in hand violates the Rule." 60 Fed. Reg. 43842, 43852 (Aug. 23, 1995).

4 19. The Rule additionally prohibits sellers and telemarketers from misrepresenting any
5 material aspect of a prize promotion, including but not limited to the nature or value of a prize. 16
6 C.F.R. § 310.3(a)(2)(v).

7 20. Pursuant to Section 3(c) of the Telemarketing Act, 15 U.S.C. § 6102 (c), and Section
8 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), violations of the Telemarketing Sales Rule
9 constitute unfair or deceptive acts or practices in or affecting commerce, in violation of Section 5(a)
10 of the FTC Act, 15 U.S.C. § 45(a).

11 **COUNT II**

12 21. In numerous instances, in connection with the telemarketing of prize promotions, the
13 defendants have failed to clearly and conspicuously disclose, before the consumer pays,

14 (a) the odds of being able to receive the prize or the factors used in calculating the
15 odds;

16 (b) that no purchase or payment is required to win a prize or participate in a prize
17 promotion; and

18 (c) the no purchase/no payment method of participating in the prize promotion.

19 22. Therefore, defendants have engaged in a deceptive telemarketing act or practice in
20 violation of Section 310.3(a)(1)(iv) of the Telemarketing Sales Rule, 16 C.F.R. § 310.3(a)(1)(iv).

21 **COUNT III**

22 23. In connection with the telemarketing of prize promotions, the defendants, in numerous
23 instances, have represented, expressly or by implication, that consumers who participate in the
24 defendants' promotions will receive a prize worth more than the amount that consumers pay to the
25 defendants.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, plaintiff requests that this Court, as authorized by Sections 13(b) and 19 of
3 the FTC Act, 15 U.S.C. §§ 53(b) and 57b, and Section 6(b) of the Telemarketing Act, 15 U.S.C. §
4 6105(b), and pursuant to its own equitable powers:

5 1. Award plaintiff such preliminary injunctive and ancillary relief as may be necessary to
6 avert the likelihood of consumer injury during the pendency of this action and to preserve the
7 possibility of effective final relief;

8 2. Permanently enjoin the defendants from violating the FTC Act and the Telemarketing
9 Sales Rule, as alleged herein;

10 3. Award such relief as the Court finds necessary to redress injury to consumers resulting
11 from the defendants' violations of the Telemarketing Sales Rule and the FTC Act, including,
12 but not limited to, rescission or reformation of contracts, restitution, the refund of monies
13 paid, and the disgorgement of ill-gotten monies; and

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

16 Date: May 19, 1997

Respectfully Submitted,

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