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

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

4049705 CANADA INC., a corporation, d/b/a PINACLE,

3782484 CANADA INC, a corporation, d/b/a M.D.S.C. PUBLISHING, and

TERRENCE CROTEAU, individually and as an owner, officer, or director of the corporate defendants,

Defendants.

Civil No. 04C 4694

JUDGE KENNELLY

MAGISTRATE JUDGE MASON

RECEIVED

JUL 19 2004

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF

Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), for its Complaint alleges as follows:

1. The FTC brings this action under Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), to secure temporary, preliminary, and permanent injunctive relief, rescission of contracts and restitution, disgorgement of ill-gotten gains, and other equitable relief for defendants' acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction pursuant to 15 U.S.C. §§ 45(a) and

53(b), and 28 U.S.C. §§ 1331, 1337(a), and 1345.

3. Venue in this district is proper under 15 U.S.C. § 53(b) and 28 U.S.C. § 1391(b), (c), and (d).

THE PARTIES

4. Plaintiff 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 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 is authorized to initiate federal district court proceedings by its own attorneys to enjoin violations of the FTC Act and to secure such equitable relief, including restitution for injured consumers, as may be appropriate in each case. 15 U.S.C. § 53(b).

5. Defendant 4049705 Canada Inc. ("Pinacle") is a Canadian corporation with its registered office and principal place of business located at 76 West Division Street, No. 206, Welland, Ontario, Canada L3B 3Z7. Defendant 4049705 Canada Inc. operates under the registered business name "Pinacle." The corporation also is registered in Ontario as Ontario Corporation No. 1575948. Pinacle transacts or has transacted business in the Northern District of Illinois and throughout the United States.

6. Defendant 3782484 Canada Inc. ("MDSC") is a Canadian corporation with its office and principal place of business located at 120 Windsor #7, Lachine, Quebec H8R 1P7. Defendant 3782484 Canada Inc. operates under the business name "M.D.S.C. Publishing." In addition to the above address, MDSC also at various points has operated from 180 Rene Levesque East, Suite 418, Montreal, Quebec H2X 1N6, and from 6900 Decarie #3315, Cote St.

Luc, Quebec H3X 2T8. MDSC currently operates from the same premises as Pinacle, at 76 West Division Street, No. 206, Welland, Ontario, Canada L3B 3Z7. MDSC transacts or has transacted business in the Northern District of Illinois and throughout the United States.

7. Defendant Terrence Croteau is or has been an owner, officer or director of Pinacle and MDSC. At all times material to this Complaint, acting alone or in concert with others, Croteau has formulated, directed, controlled, or participated in the acts and practices of the corporate defendants, including the acts and practices set forth in this Complaint. Defendant Croteau transacts or has transacted business in the Northern District of Illinois and throughout the United States.

8. Since at least 2000, defendants have acted as a common enterprise to sell a business directory and/or listings in a business directory. In operating their common business enterprise, defendants Pinacle and MDSC have the same owner and also share employees, offices, and a common goal to sell a business directory and/or listings in a business directory.

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' BUSINESS PRACTICES

10. Since at least 2000, and continuing thereafter, defendants have engaged in a plan, program, or campaign to sell a business directory and/or listings in that directory, or listings on an internet business directory, via interstate telephone calls to various businesses and other organizations (hereinafter "consumers") throughout the United States.

11. Defendants market their business directory and listings by making unsolicited outbound telephone calls to United States consumers. Defendants use a variety of tactics to sell or to induce consumers to pay for their business directory and/or a listing in that directory. Typically, defendants' telemarketers tell consumers that they are calling to verify the consumer's name, address, and telephone number for listing in defendants' business directory. Defendants' telemarketers represent, expressly or by implication, that the consumer previously was listed in defendants' business directory or that someone else in the consumer's organization previously authorized the listing.

12. In numerous instances, consumers who receive defendants' telemarketing calls proceed to verify the requested information, mistakenly believing that the consumer has previously been listed in defendants' business directory or that someone else in the consumer's organization previously authorized the listing. In numerous instances, defendants do not disclose to the consumer that there is a cost for the listing.

13. In numerous instances, once the consumer has confirmed the requested information, verifiers employed by defendants proceed to call the consumer and to again ask the consumer to verify name, address, and telephone number. Answers to these questions are recorded by defendants, who later point to these recordings as evidence that consumers authorized their listings in defendants' business directory.

14. Defendants follow up their telephone calls by mailing invoices to consumers. The invoices mailed by Pinacle typically bill consumers $389.99 for a "2 YEAR SILVER STAR LISTING at 'www.allpinacle.com.'" The invoices mailed by MDSC typically bill consumers $279.99 for a "2 YEAR LISTING IN THE 'AMERICAN BUSINESS DIRECTORY'" or

$336.99 for the "M.D.S.C. AMERICAN CORPORATE & COMMUNICATIONS C-D DIRECTORY." Defendants typically mail their invoices to the attention of the individual who took defendants' telemarketing call, and the invoices often list that individual as having authorized the order.

15. In some instances, defendants even mail invoices to consumers who have expressly stated during a telemarketing call that they are not interested in defendants' business directory or in a directory listing. In other instances, defendants simply mail invoices and sometimes a business directory to consumers who have not even been contacted by telephone. These consumers are invoiced for defendants' business directory or a listing in that directory despite the fact that defendants never attempted to sell the invoiced product to the consumer.

16. Upon receiving one of defendants' invoices, consumers often discover that no one within the organization previously purchased or ordered a directory listing from defendants and that defendants have billed the consumer for a "new" purchase. When these consumers then contact defendants to complain that they never ordered the directory listing, defendants tell consumers that the individual who took defendants' telemarketing call ordered the listing. Defendants purport to have a tape recording of that individual ordering the directory listing, and defendants tell consumers that the tape recording constitutes a binding oral contract. Because of that alleged oral contract, defendants refuse to permit consumers who seek to cancel the directory listing from doing so.

17. In numerous instances, consumers refuse to pay defendants' invoices because the directory listing was never ordered by anyone in the consumer's organization. These consumers then have their accounts referred to defendants' in-house collections department. Defendants'

collections department makes numerous collection calls to these consumers, sends repeated dunning notices, and threatens to initiate legal action and to damage consumers' credit ratings.

18. In numerous instances, defendants' in-house collections personnel, in attempting to collect on unpaid accounts, represent to consumers that they are lawyers who have been retained by defendants to collect on consumers' past-due accounts. Defendants also often send dunning notices to consumers that appear to be from a lawyer or lawyers representing defendants.

19. In numerous instances, consumers proceed to pay defendants' invoices, either because they mistakenly believe that someone within the consumer's organization ordered the directory listing from defendants, or because they believe that paying the invoice will put an end to the harassing telephone calls and mailings from defendants' collections department.

20. To induce consumers to pay their invoices, defendants frequently tell consumers that if an invoice is paid, defendants will not contact the consumer again. Defendants also often tell consumers that they will accept some lesser amount from consumers in lieu of the invoiced amount, and again, they represent that consumers paying the lesser amount will not be contacted again. In numerous instances, consumers have paid money to defendants in reliance on defendants' assurances that the consumer will not be contacted again if full or partial payment is made.

21. In numerous instances, once a consumer has paid defendants the invoiced amount or some settlement amount, defendants proceed to send additional invoices to the consumer seeking the payment of additional amounts. Defendants sometimes send these follow-up invoices even after promising that the consumer will not be contacted again.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

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

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

COUNT ONE

24. In numerous instances, in connection with the offering for sale, sale, or distribution of their business directory, or listings in their business directory, defendants have represented to consumers, expressly or by implication, through, *inter alia*, telephone calls, that consumers have a preexisting business relationship with defendants.

25. In truth and in fact, consumers typically do not have a preexisting business relationship with defendants.

26. Therefore, defendants' representations set forth in Paragraph 24 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 TWO

27. In numerous instances, in connection with the offering for sale, sale, or distribution of their business directory, or listings in their business directory, defendants have represented to consumers, expressly or by implication, through, *inter alia,* telephone calls, invoices, or letters, that consumers have agreed to purchase the business directory or a listing in the directory.

28. In truth and in fact, consumers have not agreed to purchase the business directory

or a listing in the directory.

29. Therefore, defendants' representations set forth in Paragraph 27 are false and misleading, and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act.

COUNT THREE

30. In numerous instances, to induce consumers to pay for their business directory, or listings in their business directory, defendants have represented to consumers, expressly or by implication, through, *inter alia*, telephone calls or letters: (1) that defendants have engaged legal counsel to collect on consumers' accounts; or (2) that defendants will not call or invoice consumers again if consumers will make full or partial payments of amounts allegedly due.

31. In truth and in fact, in numerous instances, (1) defendants have not engaged legal counsel to collect on consumers' accounts; and (2) defendants do not refrain from calling or invoicing those consumers who make full or partial payment of amounts allegedly due.

32. Therefore, defendants' 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.

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. Absent injunctive relief from this Court, defendants are likely to continue to injure consumers and to harm the public interest.

THE COURT'S POWER TO GRANT RELIEF

34. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers the Court to grant injunctive and such other relief as the Court may deem appropriate to halt and redress violations

of the FTC Act.

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

PRAYER FOR RELIEF

Wherefore, plaintiff, the Federal Trade Commission, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and the Court's equitable powers, requests that this Court:

1. Award plaintiff such temporary and 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, as alleged herein;

3. Award such equitable relief as the Court finds necessary to redress injury to consumers resulting from defendants' violations of the FTC Act, including but not limited to, rescission of contracts and restitution, and the disgorgement of ill-gotten gains; 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.

Respectfully submitted,

WILLIAM E. KOVACIC
General Counsel

Dated: July 19, 2004

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