

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

FEDERAL TRADE COMMISSION,)	
)	
Plaintiff,)	
)	
v.)	Civ. No.
)	
9131-4740 QUÉBEC, INC.,)	
a corporation, also d/b/a Fusion Telekom,)	
)	
JPE HOLDINGS, INC.,)	
a corporation, also d/b/a Fusion Telekom,)	
)	
JEAN-PIERRE BRAULT,)	
individually and as an officer of the corporations,)	
)	
and)	
)	
ELI FONER,)	
individually and as an officer of the corporations,)	
)	
Defendants.)	

**COMPLAINT FOR INJUNCTIVE AND
OTHER EQUITABLE RELIEF**

Plaintiff, Federal Trade Commission (“FTC” or “the Commission”), for its complaint, alleges:

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. §§ 6101-6108, to secure permanent injunctive relief, rescission of contracts and restitution, disgorgement of ill-gotten gains, and other equitable relief against Defendants for engaging in unfair and deceptive acts or practices in connection with the advertising, marketing, and sale of prepaid, unlimited-use telephone calling cards in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the Commission’s Rule entitled “Telemarketing Sales Rule,” 16 C.F.R. Part 310.

JURISDICTION AND VENUE

2. This Court has subject matter 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 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 is charged, *inter alia*, with enforcement of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair and deceptive acts or practices in or affecting commerce. The FTC is also charged with

enforcement of the Telemarketing Act, 15 U.S.C. §§ 6101-6108. Pursuant to the Telemarketing Act, the FTC promulgated and enforces the Telemarketing Sales Rule, 16 C.F.R. Part 310, which prohibits deceptive and abusive telemarketing acts or practices. The FTC 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 and disgorgement. 15 U.S.C. §§ 53(b), 57b, 6102(c), and 6105(b).

DEFENDANTS

5. Defendant 9131-4740 Québec, Inc. (“Fusion Telekom”), is a Canadian corporation organized in Québec and doing business as Fusion Telekom. Its principal place of business is 200 Davignon, Cowansville, Québec, Canada, J2K 1N9. The affairs of Fusion Telekom are controlled by the individual Defendants. Fusion Telekom transacts or has transacted business in the Northern District of Ohio.

6. Defendant JPE Holdings, Inc. (“JPE Holdings”), is a Nevada corporation with its registered office at 101 Convention Center Drive, Suite 700, Las Vegas, Nevada, 89109. JPE Holdings is the majority shareholder in 9131-4740 Québec, Inc., and also does business as Fusion Telekom. The affairs of JPE Holdings are controlled by the individual Defendants. JPE Holdings transacts or has transacted business in the Northern District of Ohio.

7. Defendant Jean-Pierre Brault is a citizen of Canada and an officer of Defendants Fusion Telekom and JPE Holdings. He lives in Montréal, Québec, Canada. Alone or in concert with others, he has formulated, directed, controlled, or participated in the acts and practices of the

corporate Defendants set forth in this Complaint. Directly or through the corporate Defendants, Defendant Brault transacts or has transacted business in the Northern District of Ohio.

8. Defendant Eli Foner is a United States citizen and an officer of Defendants Fusion Telekom and JPE Holdings. He lives in Montréal, Québec, Canada. Alone or in concert with others, he has formulated, directed, controlled, or participated in the acts and practices of the corporate Defendants set forth in this Complaint. Directly or through the corporate Defendants, Defendant Foner transacts or has transacted business in the Northern District of Ohio.

COMMERCE

9. At all times relevant to this Complaint, Defendants 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. From at least mid-2004 through at least mid-2006, Defendants fraudulently marketed telephone calling cards. Initially, Defendants engaged in a plan, program, or campaign to sell the calling cards by way of interstate telephone calls to consumers throughout the United States, including consumers in the Northern District of Ohio. Defendants placed these sales calls themselves or through third-party agent telemarketers. Defendants’ calling cards purportedly allowed consumers to make unlimited telephone calls for a fixed monthly fee by means of a toll-free access number and a personal identification number (“PIN”).

11. During the sales calls, Defendants led consumers to believe they were from or affiliated with the consumers' banks or credit card companies. Defendants typically praised the consumers for their good credit histories and, *sua sponte*, recited all or part of consumers' account numbers. Defendants then offered the telephone calling cards for a seven- or ten-day trial period for one dollar (\$1.00). Defendants told consumers the trial period would start when the consumer received the card, and claimed that the consumer could cancel the service within the trial period without incurring additional charges. Consumers who accepted the offer were told that with the card they would receive written materials describing how to use and cancel it. The card and written materials included the access telephone number and the PIN – not provided during the call – that are essential for using the card.

12. Shortly after a sale, Defendants debited the consumers' bank accounts or charged their credit cards (collectively referred to as "charged" or "billed") for one dollar (\$1.00).

13. Approximately two weeks after the call, Defendants charged, for a second time, those consumers who, they alleged, had not canceled the telephone calling card. This second bill was for sixty-nine dollars and ninety cents (\$69.90), consisting of a nineteen dollar and ninety-five cent (\$19.95) activation fee and the first month's fee of forty-nine dollars and ninety-five cents (\$49.95).

14. In numerous instances beginning in late January 2005, Defendants did not send the calling card and related written materials to consumers. As a result, many consumers purchasing in or after that time were denied the access number and PIN necessary to use Defendants' card and were denied the information needed to cancel it. These consumers received nothing for their money. Defendants continued, however, to charge these consumers

(a) for sixty-nine dollars and ninety cents (\$69.90) about two weeks after the call and (b) for monthly charges of forty-nine dollars and ninety-five cents (\$49.95).

15. When consumers who did not receive the telephone calling card and written materials called to complain about the additional charges to their accounts, using the telephone number on their account statements next to Defendants' charge, Defendants often responded by misrepresenting that the card and written materials had been sent and that the consumers failed to cancel. This response furthered Defendants' efforts to avoid refunding the charges to consumers' accounts.

16. Only with much insistence were some consumers able to get a refund, and many, if not most, of those consumers got only a partial refund from Defendants.

17. In approximately the Fall of 2005, Defendants began charging consumers' bank and credit card accounts, typically for twenty-four dollars and ninety-five cents (\$24.95), without notice to the consumers and without obtaining the consumers' authorization. When consumers called to complain about the charges, Defendants typically claimed that they resulted from a computer glitch or were authorized in an earlier telemarketing call even though, in fact, the earlier telemarketing call never occurred. When consumers requested refunds for the charges, Defendants often promised to credit their accounts, but then failed to do so.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

18. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits "unfair or deceptive acts or practices in or affecting commerce." Misrepresentations or omissions of material facts constitute deceptive acts or practices prohibited by Section 5(a). An unfair act or practice is one

that causes or is likely to cause substantial consumer injury that consumers cannot reasonably avoid and that is not outweighed by countervailing benefits to either consumers or competition.

COUNT ONE (Deception)

Misrepresenting themselves as being from consumers' banks or credit card companies

19. In numerous instances in the course of telemarketing telephone calling cards, Defendants have represented, directly or by implication, that they were calling from, on behalf of, or were otherwise affiliated with consumers' banks or credit card companies.

20. In truth and in fact, Defendants were not calling from, nor on behalf of, nor were they otherwise affiliated with, consumers' banks or credit card companies.

21. Therefore, Defendants' representation as set forth in Paragraph 19 above was 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).

COUNT TWO (Deception)

Falsely stating that the consumer will receive the calling card and letter

22. In the course of telemarketing telephone calling cards, Defendants have represented, directly or by implication, that they would send consumers the telephone calling card and written materials that would enable consumers to use and cancel the card.

23. In truth and in fact, in numerous instances Defendants did not send consumers the telephone calling card and written materials that would enable consumers to use and cancel the card.

24. Therefore, Defendants' representation as set forth in Paragraph 22 above was 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).

COUNT THREE (Unfairness)

Unfairly billing consumers without authorization

25. In numerous instances, Defendants have caused consumers' bank or credit card accounts to be charged or debited without obtaining consumers' express informed consent.

26. Defendants' practice of causing consumers' bank or credit card accounts to be charged or debited without obtaining consumers' express informed consent caused or was likely to cause substantial injury to consumers that consumers could not reasonably avoid and that was not outweighed by countervailing benefits to consumers or competition.

27. Therefore, Defendants' practice, as described in Paragraph 25 above, was unfair and violated Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

TELEMARKETING SALES RULE VIOLATIONS

28. In the Telemarketing Act, 15 U.S.C. §§ 6101-6108, Congress directed the Commission to prescribe rules prohibiting deceptive and abusive telemarketing acts or practices. On August 16, 1995, the Commission promulgated the Telemarketing Sales Rule, 16 C.F.R. Part 310. The Telemarketing Sales Rule, as amended ("TSR"), continues in full force and effect.

29. The TSR prohibits sellers and telemarketers from making a false or misleading statement to induce any person to pay for goods or services. 16 C.F.R. § 310.3(a)(4).

30. In addition, the TSR prohibits 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). In the TSR, “person” means any “individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.” 16 C.F.R. § 310.2(v).

31. Also, the TSR established a “do not call” registry, maintained by the FTC (the “National Do Not Call Registry” or “Registry”), of consumers who do not wish to receive certain types of telemarketing calls. Consumers can register their telephone numbers on the Registry without charge either through a toll-free telephone call or over the Internet at www.donotcall.gov.

32. Consumers who receive telemarketing calls to their registered numbers can complain of Registry violations the same way they registered, through a toll-free telephone call or over the Internet at www.donotcall.gov, or by otherwise contacting law enforcement authorities.

33. The FTC allows sellers, telemarketers, and other permitted organizations to access the Registry over the Internet at www.telemarketing.donotcall.gov, pay the required fees, and download the registered numbers by area code.

34. Sellers and telemarketers subject to the FTC’s jurisdiction are prohibited from calling numbers on the Registry in violation of the TSR. 16 C.F.R. § 310.4(b)(1)(iii)(B).

35. Sellers and telemarketers are generally prohibited from calling any telephone number within a given area code unless the seller first has paid the annual fee for access to the

telephone numbers within that area code that are included in the National Do Not Call Registry. 16 C.F.R. § 310.8(a) and (b).

36. 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).

37. Defendants have acted as “telemarketers” or “sellers” engaged in “telemarketing,” as those terms are defined in the Telemarketing Sales Rule, 16 C.F.R. § 310.2(z), (bb), and (cc).

COUNT FOUR

Using false or misleading statements when telemarketing

38. In numerous instances in connection with telemarketing telephone calling cards, Defendants have made, directly or indirectly, false or misleading statements to induce consumers to pay for goods or services, including, but not limited to, misrepresentations that consumers would receive a telephone calling card and written materials that would enable them to use Defendants’ card and provide information on how to cancel the card. These misrepresentations violate 16 C.F.R. § 310.3(a)(4).

COUNT FIVE

Misrepresenting an affiliation with a consumer’s bank or credit card company

39. In numerous instances in connection with telemarketing telephone calling cards, Defendants have misrepresented, directly or by implication, an affiliation with, or endorsement

or sponsorship by, the consumer's bank or credit card company, thereby violating 16 C.F.R. § 310.3(a)(2)(vii).

COUNT SIX

Calling consumers who are on the Do Not Call Registry

40. In numerous instances in connection with telemarketing telephone calling cards, Defendants have initiated, or caused others to initiate, an outbound telephone call to a person's telephone number on the National Do Not Call Registry in violation of 16 C.F.R. § 310.4(b)(1)(iii)(B).

COUNT SEVEN

Failing to pay the Do Not Call Registry Fee

41. In numerous instances in connection with telemarketing telephone calling cards, Defendants have initiated, or caused others to initiate, an outbound telephone call to a telephone number within a given area code without first paying, directly or through another person, the annual fee for accessing telephone numbers within that area code that are included in the National Do Not Call Registry, in violation of 16 C.F.R. § 310.8.

CONSUMER INJURY

42. Consumers throughout the United States, including consumers in the Northern District of Ohio, have suffered and continue to suffer substantial monetary loss as a result of Defendants' violations of the FTC Act and the TSR. In addition, Defendants have been unjustly

enriched as a result of their unlawful acts and practices. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers, enrich themselves unjustly, and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

43. 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 to prevent and remedy injury caused by Defendants' law violations, including, but not limited to, rescission of contracts and restitution and the disgorgement of ill-gotten gains.

44. 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 money.

45. Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b), provides that the powers and remedies available to the Commission under the FTC Act are available in matters involving violations of any rule promulgated by the Commission pursuant to the Telemarketing Act, such as the Telemarketing Sales Rule.

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

PRAYER FOR RELIEF

Plaintiff 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 its own equitable powers:

1. Enter a permanent injunction to prevent future violations of the FTC Act and the Telemarketing Sales Rule by Defendants;
2. 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, the refund of monies paid, and the disgorgement of ill-gotten monies; and
3. 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.

DATE: July 25, 2007

Respectfully submitted,

WILLIAM BLUMENTHAL
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Federal Trade Commission
Washington, D.C.

JOHN M. MENDENHALL, Director
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/s/ Jonathan L. Kessler

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