

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. _____

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FEDERAL TRADE COMMISSION,)
)
Plaintiff,)
)
v.)
)
CREDIAMERICA GROUP, INC.)
d/b/a LATIN SHOPPING NETWORK,)
a Florida corporation;)
)
AMERICA COMMUNICATIONS GROUP, INC.,)
a Florida corporation; and)
)
FELIPE TAVERAS,)
individually and as an officer of the above)
listed companies,)
)
Defendants.)
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COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF

Plaintiff, the FEDERAL TRADE COMMISSION (“FTC” or “the Commission”), for its complaint against CREDIAMERICA GROUP, INC., d/b/a Latin Shopping Network, AMERICA COMMUNICATIONS GROUP, INC., and FELIPE TAVERAS (collectively, “Defendants”) alleges:

1. The FTC brings this action under Sections 5(a), 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 53(b) and 57b, to obtain permanent injunctive relief, rescission of contracts, restitution, disgorgement, and other equitable relief for Defendants’ violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the FTC’s Trade Regulation Rule entitled

“Mail or Telephone Order Merchandise Rule” (the “Telephone Order Rule” or the “Rule”), 16 C.F.R. § 435.1.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 53(b) and 57b. This action arises under 15 U.S.C. § 45(a)(1).
3. Venue in the United States District Court for the Southern District of Florida is proper under 28 U.S.C. §§ 1391(b) and (c), and 15 U.S.C. § 53(b).

THE PARTIES

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, as well as enforcement of the Telephone Order Rule, 16 C.F.R. § 435.1. The Commission is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act 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) and 57b.
5. Defendant Crediamerica Group, Inc., (“Crediamerica”) is doing business as Latin Shopping Network and is a Florida corporation with its principal place of business located at 7825 NW 29th Street, Miami, Florida 33122. Crediamerica markets and sells computers. Crediamerica transacts or has transacted business in the Southern District of Florida.

6. Defendant America Communications Group, Inc., (“America Communications”) is a Florida corporation with its principal place of business located at 7825 NW 29th Street, Miami, Florida 33122. America Communications assists Crediamerica in marketing and selling computers. It transacts or has transacted business in the Southern District of Florida.
7. Defendant Felipe Taveras is the president and director of Crediamerica and America Communications. At all times material to this complaint, Taveras, acting alone or in concert with others, 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. He transacts or has transacted business in the Southern District of Florida.

COMMERCE

8. At all times relevant to this complaint, Defendants maintained a substantial course of trade in the advertising, marketing, promoting, offering for sale and sale of computer systems, in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS’ BUSINESS ACTIVITIES

9. Since at least early 2002, Defendants have conducted business throughout the United States from business premises in Miami, Florida. Since that time, Defendants have marketed computer systems principally to Spanish-speaking consumers.
10. Defendants advertised their computer systems to prospective purchasers via Spanish-language television advertisements that air in various markets across the United States. Defendants’ television advertisements offered consumers the opportunity to purchase a

complete computer system for between \$500 and \$1000.

11. Defendants' advertisements offered a complete computer system, including a central processing unit ("CPU"), monitor, and various peripherals, including a keyboard, speakers, a mouse, and software. The advertisements contained a toll-free telephone number that consumers called to order the computer system.
12. Defendants' advertisements represented to prospective purchasers that, in exchange for a payment ranging from \$500 to \$1,000, purchasers would receive a computer system.
13. When consumers called to order the system, Defendants' sales representatives repeated the representations in the advertisements that Defendants were selling a computer system for \$500, with add-ons increasing the price up to \$1000, and that the computer system would arrive within 15 to 30 days.
14. Defendants then obtained the consumer's checking account information or credit card number over the telephone or requested a money order from the consumer. Defendants' next step was to cash a phone check or money order or debit the consumer's credit card account for the amount of the computer system.
15. Defendants then mailed a package of materials to purchasers. The package typically included an order confirmation letter and a flyer with the computer system, its features and a price.
16. In many instances, Defendants never sent a computer to the consumer.
17. When consumers called to find out the status of their computer, Defendants' representatives told them that the computer would arrive in another two to three weeks. After the computer system still did not arrive, consumers called again. Defendants'

representatives again told them that the computer would arrive in another two to three weeks. The cycle was often repeated several more times before the consumer gave up or complained to the Better Business Bureau or to a state or local agency.

18. In certain instances, Defendants sent to consumers a defective or incomplete computer. The computer often did not work or stopped working after a short period of time.
19. Consumers who received nothing or who received an incomplete or defective computer often asked Defendants for a refund. Defendants told consumers that refunds were never given.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

20. 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.”

COUNT I

21. In numerous instances from early 2002 until at least mid-2003, in connection with the marketing of computer systems, Defendants represented, expressly or by implication, that consumers who purchased their computer system would receive a complete, functioning computer system by paying a price of between \$500 and \$1000.
22. In truth and in fact, many consumers who purchased Defendants’ computer system either never received a computer system or did not receive a complete, functioning computer system.
23. Therefore, Defendants’ representations as set forth in Paragraph 21 were false and misleading and constituted deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

THE MAIL OR TELEPHONE ORDER MERCHANDISE RULE

24. The FTC promulgated the Mail or Telephone Order Merchandise Rule, 16 C.F.R. Part 435, on October 22, 1975, and revised the Rule on September 21, 1993. The revised Rule became effective on March 1, 1994, and has remained in full force and effect since that time.
25. The Rule applies to sales in which the buyer has ordered merchandise from the seller by mail or directly or indirectly by telephone. 16 C.F.R. §§ 435.1 and 435.2 (a) and (b).
26. The Rule prohibits a seller from soliciting any order for the sale of merchandise to be ordered by the buyer through the mail or by telephone, unless, at the time of the solicitation, the seller has a reasonable basis to expect that it will be able to ship any ordered merchandise to the buyer within the time stated in the solicitation, or, if no time is stated, within thirty days of the completion of the order. 16 C.F.R. § 435.1(a)(1).
27. The Rule requires that the seller follow certain procedures if merchandise ordered through the mail or by telephone will not be shipped within the applicable time limit. Specifically, the Rule requires that, when there is a shipping delay, the seller must, prior to the expiration of the applicable time, offer the buyer an option either to agree to the delay or to cancel the order and receive a prompt refund (as defined in 16 C.F.R. § 435.2(f)). 16 C.F.R. § 435.1(b)(1).
28. The Rule requires that a seller deem an order canceled and make a prompt refund to the buyer whenever the seller has failed to ship within the prescribed time period and has failed to offer the consumer the option to consent to further delay or to cancel the order. 16 C.F.R. § 435.1(c).

29. Pursuant to Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), and 16 C.F.R. § 435.1, violations of the 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 MAIL OR TELEPHONE ORDER MERCHANDISE RULE

COUNT II

30. In numerous instances, Defendants solicited orders for the sale of merchandise to be ordered by the buyer through the telephone without a reasonable basis to expect that they would be able to ship any ordered merchandise to the buyer within the time stated in the solicitation, or, if no time was clearly and conspicuously stated, within thirty days of receipt of a properly completed order, thereby violating 16 C.F.R. § 435.1(a)(1).

COUNT III

31. In numerous instances, after soliciting orders for the sale of merchandise ordered by the buyer through the telephone and being unable to ship merchandise within the applicable time as set out in Section 435.1(a)(1) of the Rule, Defendants failed to offer to the buyer, clearly and conspicuously and without prior demand, an option either to consent to a delay in shipping or to cancel the order and receive a prompt refund, thereby violating 16 C.F.R. § 435.1(b)(1).

COUNT IV

32. In numerous instances, Defendants failed to make a “prompt refund,” as that term is defined in 16 C.F.R. § 435.2(f), to buyers when such refunds were required by Section 435.1(c) of the Rule, thereby violating 16 C.F.R. § 435.1(c).

CONSUMER INJURY

33. Consumers nationwide have suffered and will continue to suffer substantial monetary loss as a result of Defendants' violations of Section 5(a) of the FTC Act and the Mail or Telephone Order Merchandise Rule. These consumers have each paid hundreds of dollars to Defendants for merchandise that they have never received or for items not of the type or quality that they ordered. 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, reap unjust enrichment, and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

34. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and other ancillary relief, including consumer redress, disgorgement and restitution, to prevent and remedy any violations of any provision of law enforced by the Federal Trade Commission.
35. Section 19 of the FTC Act, 15 U.S.C. § 57b, authorizes this Court to grant such relief as the Court finds necessary to redress injury to consumers or other persons resulting from Defendants' violations of the Mail or Telephone Order Merchandise Rule, including the rescission and reformation of contracts, and the refund of money.
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 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 pursuant to its own equitable powers:

1. Permanently enjoin the Defendants from violating the FTC Act and the Mail or Telephone Order Merchandise Rule, as alleged herein;
2. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act and the Mail or Telephone Order Merchandise Rule, including, but not limited to, rescission of contracts, the refund of monies paid, and the disgorgement of ill-gotten gains; and
3. Award 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: _____

Respectfully submitted,

JOHN D. GRAUBERT
Acting General Counsel

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