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CLERK, US DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE, FLORIDA

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

Federal Trade Commission,

Plaintiff,

v.

Gregory Bryant, Jr., an individual, d/b/a Gregory Bryant & Associates, Dove Marketing Corporation, GBA Publishing, Inc., GBA Financing, Network Marketing, Miracle Moms, and DM Marketing Services, and

Nadira Bryant, an individual, d/b/a Gregory Bryant & Associates, Dove Marketing Corporation, GBA Publishing, Inc., GBA Financing, Network Marketing, Miracle Moms, and DM Marketing Services,

Defendants.

Case No. 3:04-CV-897-J-32 MMH

**COMPLAINT FOR PERMANENT
INJUNCTION AND OTHER
EQUITABLE RELIEF**

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

1. The Commission brings this action under Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), Section 7(a) of the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (“CAN-SPAM Act”), 15 U.S.C. § 7706(a), and the Telemarketing and Consumer Fraud and Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C. § 6101 *et. seq.*, to obtain temporary, preliminary, and permanent injunctive relief, rescission of contracts, restitution, redress, disgorgement, and other equitable relief for Defendants’ deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), Section 5(a) of the CAN-SPAM Act, 15 U.S.C. § 7704(a), and the FTC Trade Regulation Rule, entitled the “Telemarketing Sales Rule,” 16 C.F.R. Part 310.

JURISDICTION AND VENUE

2. Subject matter jurisdiction is conferred upon this Court by 15 U.S.C. §§ 45(a), 53(b), 6102(c), 6105(b), 7706(a) and 28 U.S.C. §§ 1331, 1337(a), and 1345.

3. Venue in the United States District Court for the Middle District of Florida is proper under 15 U.S.C. § 53(b) and 28 U.S.C. § 1391(b) and (c).

PLAINTIFF

4. Plaintiff, the FTC, is an independent agency of the United States Government created by statute. *See* 15 U.S.C. § 41 *et seq.* The Commission enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits deceptive or unfair acts or practices in or

affecting commerce. The FTC is also charged with enforcing various provisions of the CAN-SPAM Act as if the violation of the CAN-SPAM Act “were an unfair or deceptive act or practice proscribed under Section 18(a)(1)(B) of the [FTC] Act.” 15 U.S.C. § 7706(a). In addition, the Commission enforces the Telemarketing Sales Rule (“TSR”), 16 C.F.R. Part 310, which prohibits deceptive or abusive telemarketing practices. The Commission is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act, the CAN-SPAM Act, and the TSR, and to secure such other equitable relief as may be appropriate in each case, including redress and disgorgement. See 15 U.S.C. §§ 53(b), 7706(a) and 6102(c).

DEFENDANTS

5. Defendant Gregory Bryant, Jr. is an individual doing business as Gregory Bryant & Associates, an unincorporated entity. At all times material to this Complaint, acting alone or in conjunction with others, he has formulated, directed, controlled, or participated in the acts and practices alleged in this Complaint. He transacts or has transacted business in the Middle District of Florida and throughout the United States.

6. Defendant Nadira Bryant is an individual doing business as Gregory Bryant & Associates, an unincorporated entity. At all times material to this complaint, acting alone or in conjunction with others, she has formulated, directed, controlled, or participated in the acts and practices alleged in this complaint. She transacts or has transacted business in the Middle District of Florida and throughout the United States.

7. Defendants do business under the names of a variety of unincorporated entities,

including, but not limited to, Gregory Bryant & Associates, Dove Marketing Corporation, GBA Publishing, Inc., GBA Financing, Network Marketing, Miracle Moms, and DM Marketing Services.

COMMERCE

8. 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.

DEFINITIONS

9. “**Electronic mail message**” (or “**e-mail**”) means a message sent to a unique electronic mail address. 15 U.S.C. § 7702(6).

10. “**Electronic mail address**” means a destination, commonly expressed as a string of characters, consisting of a unique user name or mailbox (commonly referred to as the “local part”) and a reference to an Internet domain (commonly referred to as the “domain part”), whether or not displayed, to which an electronic mail message can be sent or delivered. 15 U.S.C. § 7702(5).

11. “**Commercial electronic mail message**” means any electronic mail message the primary purpose of which is the commercial advertisement or promotion of a commercial product or service (including the content on an Internet website operated for commercial purposes). 15 U.S.C. § 7702(2).

12. “**Header information**” means the source, destination, and routing information attached to an electronic mail message, including the originating domain

name and originating electronic mail address, and any other information that appears in the line identifying, or purporting to identify, a person initiating the message. 15 U.S.C. § 7702(8).

13. **“Initiate,”** when used with respect to a commercial e-mail message, means to originate or transmit such message or to procure the origination or transmission of such message. 15 U.S.C. § 7702(9).

14. **“Procure,”** when used with respect to the initiation of a commercial e-mail message, means intentionally to pay or provide other consideration to, or induce, another person to initiate such a message on one’s behalf. 15 U.S.C. § 7702(12).

15. **“Protected computer”** means a computer which is used in interstate or foreign commerce or communication, including a computer located outside the United States that is used in a manner that affects interstate or foreign commerce or communication of the United States. 15 U.S.C. § 7702(13); 18 U.S.C. § 1030(e)(2)(B).

DEFENDANTS’ BUSINESS PRACTICES

Defendants’ Illegal Spamming Practices

16. Since at least October 2002 and continuing to the present, the Defendants, doing business under a variety of unincorporated names, have promoted, offered for sale, or sold various products and services to consumers throughout the United States, including a purported envelope-stuffing business opportunity.

17. From January 1, 2004 through June 2004, consumers forwarded over 600 e-mail messages initiated by Defendants to the FTC’s spam database at uce@ftc.gov.

18. The primary purpose of a majority of these e-mail messages is the commercial advertisement or promotion of the Defendants' envelope-stuffing business opportunity. Other messages initiated by the Defendants since January 1, 2004 promote a get-rich-quick scheme, an import-export business, an electronic payment processing business, and a record label run by the Defendants.

19. In numerous instances, from January 1, 2004 and continuing to the present, Defendants have initiated the transmission, to protected computers, of commercial e-mail messages containing header information that is materially false or materially misleading.

20. Commercial e-mail messages initiated by Defendants contain header information that includes "from" and "reply-to" fields. The "from" field purports to identify who sent the e-mail; the "reply-to" field identifies to whom a return e-mail will be sent if the e-mail recipient clicks the "reply" button.

21. In numerous instances, e-mail messages initiated by Defendants include "from" fields that have been altered in a manner that impairs the ability of Internet service providers or law enforcement agencies to identify, locate, or investigate a violation of the law, or has impaired the ability of recipients to respond to the person who initiated the e-mail.

22. Specifically, in numerous instances, Defendants' commercial e-mail messages contain header information falsely indicating that the message is either "from" an unrelated third party or "from" and "to" the recipient's own e-mail address.

23. In addition, the "reply-to" fields of numerous commercial e-mail messages

initiated by Defendants contain e-mail addresses that: (1) are registered to unrelated third parties; or (2) were obtained by Defendants by means of false or fraudulent pretenses or representations.

24. The initiation by Defendants of e-mail messages containing materially false or materially misleading "reply-to" fields, as described above in paragraph 23, has impaired the ability of Internet service providers or law enforcement agencies to identify, locate, or investigate a violation of the law, or has impaired the ability of recipients to respond to the person who initiated the e-mail.

25. In numerous instances, from January 1, 2004 and continuing to the present, commercial e-mail messages initiated by Defendants to protected computers utilize subject headings containing information that is likely to mislead a recipient, acting reasonably under the circumstances, about a material fact regarding the contents or subject matter of the message.

26. For example, commercial e-mail messages initiated by Defendants have included the following deceptive subject headings:

- A. "Info You Have Requested," where the contents or subject matter of the e-mail does not pertain to information previously requested by the recipient.
- B. "CLERICAL - Bank Drafting \$1054/Wk Guaranteed," "We Need Homeworkers \$3,000/wk - Guaranteed!," "HELP WANTED - CLERICAL," "Computer Operators Needed Guaranteed \$400-800/Wk!" and "NOW HIRING GUARANTEED \$1,054/WK," where the contents or

subject matter of the e-mail does not pertain to a legitimate employment or money-making opportunity.

- C. “Stop Dreaming and Start Making Money!” and “Earn \$10,000+/Mo.,” where the contents or subject matter of the e-mail does not pertain to a legitimate money-making opportunity.

Defendants’ Fraudulent Work-At-Home Scheme

27. In e-mail promoting the Defendants’ envelope-stuffing business opportunity, the Defendants represent that consumers are likely to earn a substantial amount of money by participating in this work-at-home scheme.

28. In their e-mail solicitation, the Defendants promise to send consumers a free home mailing kit that will enable consumers to earn \$4 for each envelope that they stuff and mail, as well as a 60% commission for every sale generated by their mailings.

29. According to the envelope-stuffing e-mail, consumers need only pay a one-time “shipping and handling” fee of \$24.77 to participate in the program.

30. The Defendants’ e-mail also states that consumers who participate in the program will receive an immediate “no questions asked” refund by returning materials received from Defendants within 30 days.

31. To induce consumers to purchase the envelope-stuffing work-at-home opportunity, the Defendants make the following (uncorrected) statements in their e-mail:

Dear Inquirer,

Thank you for responding to our advertisement on our part-time

position "Clerical bank drafting \$1,054/Wk Guaranteed! M-F 35/hr wk"
processing bank drafts."

* * *

"IMPORTANT MESSAGE"

"If you have any interest in this position, please respond within 3 days
because positions are being filled on a first come, first serve basis" Hurry!
Don't Delay! Offer Limited!

* * *

"New Revolutionary Home Mailing Program"

Pays you \$1,054/Weekly
plus 60% commission on every sale

And never requires you to purchase Any envelopes, or Postage Stamps
Ever!...For as long as you stay in the program! . . . We are pleased to
announce that "Gregory Bryant & Assoc." a reputable credit card
processing firm, is looking for a limited number of homeworkers, to help
them mail their offers out to the millions of people, who they could never
possibly reach, even if they were to work around the clock!

* * *

If you are interested in becoming a permanent home-mailer in this "HIGH
PROFIT" PROGRAM, Gregory Bryant & Assoc" requires a one-time
shipping & handling fee of ONLY \$24.77 To receive your "FREE 30
DAY TRIAL COMPLETE HOME-MAILING KIT, "containing
everything you need to start earning FAST PROFITS the very same day
you receive it . . .

* * *

If you decide to stay in the program after your 30 day trial. We will bill
you a one time registration fee of ONLY \$24.95 for the program!

* * *

We will refund DOUBLE your registration fee of \$24.95 after you send us

your first 100 envelopes. This is in addition to your regular rate of \$4 per envelope as well as over 60% commission on every sale generated by your mailings! ACT NOW!

According to "Gregory Bryant & Assoc.." if you are unhappy with their Home-mailing program in any way you may return it ANYTIME within 30 DAYS And you will receive an IMMEDIATE REFUND NO QUESTIONS ASKED!

* * *

As a special bonus to readers of this column . . . the first 500 homeworkers that respond to this offer will receive a FREE BONUS GIFT worth \$700 from "Gregory Bryant & Assoc. " just for trying their program!

* * *

1. Question: What type of work am I doing for Gregory Bryant & Assoc.?

Answer: You are helping our company mail offers to many different people who are requesting financial information by phone. . . . We are so overwhelmed with calls and mail requests that we can not handle all the requests, that are coming into our corporate headquarters at one time and we need your help.

2. Question: Do I have to Advertise?

Answer: "No", We already advertise our products and services. . . We are receiving so many requests that we need your help to fulfill the millions of inquiries received by phone, fax, mail & online daily. Your duties will include answer incoming calls (calls are optional) and stuffing envelope request for information on our products and services. That's it!

* * *

4. Question: How often will I receive work?

Answer: As much as you can handle. . . . However, you can expect work on a daily basis! Usually 100 to 300 envelope mail request per day or per week. Our system is notified to increase your work by the amount of time

it takes you to complete your work.

5. Question: Do Gregory Bryant & Assoc. Supply the leads, mailing list, envelopes, literature and contact information?

Answer: "Yes", we supply you with every thing you need to send our information to our existing clients and new customers who are currently requesting our information daily.

6. Question: Are there any other fees that I would have to pay once I mail in my \$24.77?

Answer: "No", there are no other fees. None! Just start working when the mail request arrives.

* * *

Now that I have answered all your questions I have a question for you! Do you think you would be interested in becoming a permanent homebased worker for our company and earning an extra Guaranteed \$30k to \$100,000 A Year?

32. In numerous instances, consumers purchase the Defendants' work-at-home program by placing inbound telephone calls to telephone numbers provided in Defendants' e-mail messages. During these telephone calls, the Defendants obtain consumers' personal financial information, including their bank routing number and checking account number. Using personal financial information provided by consumers, the Defendants frequently create paper "demand draft" checks and then deposit these checks into bank accounts maintained by the Defendants.

33. The Defendants take no further steps to verify that their customers have expressly authorized these debits. For example, the Defendants do not employ any of the following means to verify authorization: (a) express written authorization, which

includes the customer's signature; (b) express oral authorization which is audio-recorded and made available upon request to the customer; or (c) written confirmation of the transaction sent to the customer via first class mail prior to the submission for payment of the customer's billing information.

34. In numerous instances, in connection with the telemarketing of their work-at-home program, the Defendants withdraw funds from consumers' bank accounts without consumers' authorization or consent. For example, in numerous instances, the Defendants represent that they will withdraw only the \$24.77 "shipping and handling" fee from consumers' bank accounts but instead withdraw the \$24.95 "registration" fee as well. In numerous other instances, Defendants initially inform consumers that the total fee is \$49.72, initially withdraw \$49.72 from consumers' bank accounts, and subsequently make an unauthorized withdrawal from consumers' accounts for the same amount.

35. Notwithstanding the Defendants' unconditional 30-day money-back guarantee, in numerous instances, the Defendants fail to provide refunds to consumers who request one and return materials they received, if any, within the allotted 30 days.

36. Consumers who inquire about the status of refunds are frequently subjected to additional misrepresentations. Specifically, the Defendants routinely claim that refunds are being processed or have already been issued when, in fact, no action has been taken.

37. In numerous other instances, the Defendants falsely claim that consumers never returned their materials, attempted to return damaged materials, or failed to act

within the 30-day trial period.

38. In numerous instances, consumers who pay the Defendants' fees do not receive the envelope-stuffing materials they were promised. Instead, they receive nothing at all or a package of materials consisting of a two-page letter and a CD-ROM containing an electronic version of a booklet entitled "THE BUSINESS OPPORTUNITY OF THE DECADE."

39. The Defendants' booklet furnishes consumers with the means and instrumentalities to perpetuate the Defendants' scam, including sample advertisements, telephone scripts, brochures, and order forms.

40. The "step by step" instructions provided in the Defendants' booklet purportedly enable "ordinary people . . . with no special skills . . . or previous experience" to earn "up to \$700.00 per day" through the placement of classified advertisements promoting products and services marketed by the Defendants, including electronic check processing and a variety of materials on subjects such as credit repair, debt counseling, and obtaining credit cards.

41. The Defendants' booklet instructs consumers to place classified advertisements "in as many newspapers as you can." Sample advertisements provided by the Defendants include:

Stay Home Make Money! Earn up to \$700.00 weekly providing informational products. [F]or more information call (insert your number) or e-mail GBAFinancing@freeautobot.com.

* * *

\$300 + per day possible - just providing information. [F]or more info call (insert your telephone number). [O]r email GBAFinancing@freeautobot.com.

42. In their booklet, the Defendants instruct participants to ask consumers who respond to the above-referenced advertisements for \$1 to \$4 and a postage-paid, pre-addressed envelope. The Defendants further instruct participants to use these envelopes to mail brochures provided in the booklet to consumers. One brochure provided by the Defendants for distribution to consumers features a faux newspaper article about Gregory Bryant & Associates with the headline: "West Palm Beach lady makes \$126,000 Mailing letters!!!" Another brochure promotes the Defendants' "CREDIT POWER PROGRAM," which purportedly instructs consumers how to obtain credit, increase credit, "solve debt problems," and "raise large amounts of cash quickly." The Defendants charge between \$29.95 and \$199.95 for the products and services featured in their booklet.

VIOLATIONS OF THE CAN-SPAM ACT

43. The CAN-SPAM Act, 15 U.S.C. § 7701 et seq., became effective on January 1, 2004, and has since remained in full force and effect.

44. Section 5(a)(1) of the CAN-SPAM Act, 15 U.S.C. § 7704(a)(1), states:

It is unlawful for any person to initiate the transmission, to a protected computer, of a commercial electronic mail message, or a transactional or relationship message, that contains, or is accompanied by, header information that is materially false or materially misleading.

45. Section 3(13) of the CAN-SPAM Act, 15 U.S.C. § 7702(13), defines

“protected computer” by reference to 18 U.S.C. § 1030(e)(2)(B), which states that a protected computer is:

a computer which is used in interstate or foreign commerce or communication, including a computer located outside the United States that is used in a manner that affects interstate or foreign commerce or communication of the United States.

46. Section 5(a)(6) of the CAN-SPAM Act, 15 U.S.C. § 7704(a)(6), states:

For purposes of [section 5(a)(1)], the term “materially,” when used with respect to false or misleading header information, includes the alteration or concealment of header information in a manner that would impair the ability of an Internet access service processing the message on behalf of a recipient, a person alleging a violation of this section, or a law enforcement agency to identify, locate, or respond to a person who initiated the electronic mail message or to investigate the alleged violation, or the ability of a recipient of the message to respond to a person who initiated the electronic message.

47. Section 5(a)(2) of the CAN-SPAM Act, 15 U.S.C. § 7704(a)(2), states:

It is unlawful for any person to initiate the transmission to a protected computer of a commercial electronic mail message if such person has actual knowledge, or knowledge fairly implied on the basis of objective circumstances, that a subject heading of the message would be likely to mislead a recipient, acting reasonably under the circumstances, about a material fact regarding the contents or subject matter of the message (consistent with the criteria used in enforcement of section 5 of the Federal Trade Commission Act (*15 U.S.C. 45*)).

48. Section 7(a) of the CAN-SPAM Act states:

[T]his Act shall be enforced by the [FTC] as if the violation of this Act were an unfair or deceptive act or practice proscribed under section 18(a)(1)(B) of the [FTC] Act (*15 U.S.C. 57a(a)(1)(B)*).

49. Section 7(e) of the CAN-SPAM Act, states:

Notwithstanding any other provision of this Act, . . . through an order to cease and desist or an injunction, with . . . section 5(a)(2), . . . neither the Commission nor the Federal Communications Commission shall be required to allege or prove the state of mind required by such section or subparagraph.

COUNT I

50. In numerous instances, including but not limited to the examples set forth in paragraphs 19-24, Defendants have initiated the transmission, to protected computers, of commercial e-mail messages that contained, or were accompanied by, header information that Defendants altered or concealed in a manner that would impair the ability of an Internet access service processing the message on behalf of a recipient, a person alleging a violation of this section, or a law enforcement agency to identify, locate, or respond to a person who initiated the e-mail message or to investigate the alleged violation, or the ability of a recipient of the message to respond to a person who initiated the e-mail message.

51. Therefore, Defendants have initiated the transmission, to protected computers, of commercial e-mail containing materially false or materially misleading header information.

52. Therefore, Defendants' acts or practices, as described in paragraphs 50-51, violate Section 5(a)(1) of the CAN-SPAM Act, 15 U.S.C. § 7704(a)(1).

COUNT II

53. In numerous instances, Defendants have initiated the transmission to protected computers of commercial e-mail messages containing subject headings likely to mislead recipients, acting reasonably under the circumstances, about material facts regarding the contents or subject matter of the messages, including but not limited to the following examples of subject headings used in Defendants' e-mail messages:

- A. "Info You Have Requested," implying that consumers previously requested receipt of the information in Defendants' e-mail.
- B. "CLERICAL - Bank Drafting \$1054/Wk Guaranteed," "We Need Homeworkers \$3,000/wk - Guaranteed!," "HELP WANTED - CLERICAL," "Computer Operators Needed Guaranteed \$400-800/Wk!" and "NOW HIRING GUARANTEED \$1,054/WK," implying that consumers can obtain legitimate employment from the Defendants.
- C. "Stop Dreaming and Start Making Money!," and "Earn \$10,000+/Mo.," implying consumers can earn a substantial amount of money from the Defendants.

54. In truth and in fact, Defendants' e-mail messages:

- A. Are unsolicited and do not contain information previously requested by consumers.

- B. Do not contain information regarding a legitimate employment opportunity.
- C. Do not contain information regarding a legitimate money-making opportunity.

55. Therefore, Defendants' acts or practices, as described in paragraphs 53-54, violate Section 5(a)(2) of the CAN-SPAM Act, 15 U.S.C. § 7704(a)(2), as modified by Section 7(e) of the CAN-SPAM Act, 15 U.S.C. § 7706(e).

VIOLATIONS OF SECTION 5 OF THE FTC ACT

56. 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 fact constitute deceptive acts or practices pursuant to Section 5(a) of the FTC Act.

COUNT III

57. In numerous instances, in the course of offering for sale and selling a purported work-at-home opportunity, the Defendants represent, expressly or by implication, that consumers, who pay the required fees, are likely to earn a substantial amount of money from the Defendants' work-at-home program.

58. In truth and in fact, consumers who pay these fees are not likely to earn a substantial amount of money from the Defendants' work-at-home program.

59. Therefore, the Defendants' representations set forth in paragraph 57 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 IV

60. In numerous instances, in the course of offering for sale and selling a purported work-at-home opportunity, the Defendants represent, expressly or by implication, that they will provide consumers, who pay the required fees, with pre-addressed, pre-stamped envelopes to stuff, and that the Defendants will pay such consumers \$4 for each such envelope that consumers stuff and mail and a 60% commission for every sale generated by consumers' mailings.

61. In truth and in fact, the Defendants do not provide consumers, who pay the required fees, with pre-addressed, pre-stamped envelopes to stuff, and the Defendants do not pay such consumers \$4 for each such envelope that consumers stuff and mail or a 60% commission for every sale generated by consumers' mailings.

62. Therefore, the Defendants' representations set forth in paragraph 60 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 V

63. In numerous instances, in the course of offering for sale and selling a purported work-at-home opportunity, the Defendants represent, expressly or by implication, that they will fully refund fees paid by consumers who request a refund within 30 days and return any materials received from the Defendants.

64. In truth and in fact, in numerous instances in which the Defendants have made the representation set forth in paragraph 63, the Defendants do not fully refund fees

paid by consumers who request a refund within 30 days and who return materials to the Defendants within the allotted time period.

65. Therefore, the Defendants' representation set forth in paragraph 63 is 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 VI

66. By furnishing consumers with an instruction booklet and sales pamphlet that contains false and misleading representations, including but not limited to the false and misleading representations set forth in paragraphs 38-42, the Defendants have provided the means and instrumentalities for the commission of deceptive acts and practices.

67. Therefore, the Defendants' practices, as set forth in paragraph 66, constitute deceptive acts and practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

VIOLATIONS OF THE FTC'S TELEMARKETING SALES RULE

68. The Telemarketing Act, 15 U.S.C. § 6101 *et. seq.*, required the FTC to prescribe rules prohibiting abusive and deceptive telemarketing acts or practices. On August 16, 1995, the FTC promulgated the TSR, 16 C.F.R. Part 310, which became effective on December 31, 1995. On December 18, 2002, the FTC promulgated amendments to the TSR, which became effective on March 31, 2003.

69. Pursuant to amendments to the TSR, telephone calls initiated by a consumer in response to an advertisement relating to a business opportunity not covered by the

Commission's Franchise Rule are covered by the TSR. 16 C.F.R. §§ 310.6(b)(5)-(6).

70. Section 310.3(a)(3) of the TSR provides that it is a deceptive telemarketing act or practice for a seller or telemarketer to cause billing information to be submitted for payment without the customer's express verifiable authorization. 16 C.F.R. § 310.3(a)(3).

71. Authorization is deemed "verifiable" when the seller or telemarketer obtains:

- (1) express written authorization from the customer, including the customer's signature;
- (2) express oral authorization from the customer which is audio-recorded, made available upon request to the customer, the customer's bank, or other billing entity, and which evidences clearly the customer's authorization of payment for the goods or services that are the subject of the transaction and the customer's receipt of all the information about the transaction identified in 16 C.F.R. §§ 310.3(a)(ii)(A) - (G); or (3) written confirmation of the transaction sent to the customer via first class mail prior to submission for payment of the customer's billing information that includes all of the information contained in §§ 310.3(a)(3)(ii)(A)-(G) and a clear and conspicuous statement of the procedures the customer should use to obtain a refund in the event the confirmation is inaccurate. 16 C.F.R. §§ 310.3(a)(3)(i)-(iii).

72. Section 310.4(a)(6) of the TSR provides that it is an abusive telemarketing act or practice for a seller or telemarketer to cause billing information to be submitted for payment without the customer's express informed consent. 16 C.F.R. § 310.4(a)(6).

73. The Defendants are "sellers" or "telemarketers" engaged in the

“telemarketing” of a “business opportunity” within the meaning of the TSR. See 16 C.F.R. §§ 310.2(z), (bb), (cc), and 310.6(b)(5)-(6).

74. 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 TSR 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).

COUNT VII

75. In numerous instances, including but not limited to the examples set forth in Paragraphs 32-34, in the course of telemarketing a purported work-at-home business opportunity, the Defendants have caused billing information to be submitted for payment without the express verifiable authorization of their customers.

76. By causing billing information to be submitted for payment without the express verifiable authorization of their customers, the Defendants have violated Section 310.3(a)(3) of the TSR, 16 C.F.R. § 310.3(a)(3).

COUNT VIII

77. In numerous instances, including but not limited to the examples set forth in Paragraph 34, in the course of telemarketing a purported work-at-home business opportunity, the Defendants have caused billing information to be submitted for payment without the express informed consent of their customers.

78. By causing billing information to be submitted for payment without the express informed consent of their customers, the Defendants have violated Section

310.4(a)(6) of the TSR, 16 C.F.R. § 310.4(a)(6).

CONSUMER INJURY

79. Consumers throughout the United States have suffered, and continue to suffer, 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, reap unjust enrichment, and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

80. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), Section 7(a) and (d) of the CAN-SPAM Act, 15 U.S.C. § 7706(a) and (d), and Section 3(c) of the Telemarketing Act, 15 U.S.C. § 6102(c), empower this Court to grant injunctive and other relief to prevent and remedy Defendants' violations of the FTC Act, the CAN-SPAM Act, and the TSR, and in the exercise of its equitable jurisdiction, to award redress to remedy the injury to consumers, to order the disgorgement of monies resulting from Defendants' unlawful acts or practices, and to order other ancillary equitable relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff FTC, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), Section 7(a) of the CAN-SPAM Act, 15 U.S.C. § 7706(a), Sections 3(c) and 6(b) of the Telemarketing Act, 15 U.S.C. §§ 6102(c) and 6105(b), and the Court's own equitable powers, requests that the Court:

1. Enter an order enjoining Defendants preliminarily and permanently from

violating Section 5(a) of the FTC Act, Section 5(a) of the CAN-SPAM Act, and the TSR, and freezing Defendants' assets;

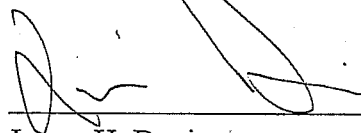
2. Award Plaintiff such relief as the Court finds necessary to redress the injury to consumers caused by Defendants' violations of the FTC Act, the CAN-SPAM Act, and the TSR, including, but not limited to, rescission of contracts, restitution, disgorgement of ill-gotten gains and the refund of monies paid; and

3. Award Plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may deem just and proper.

Dated: September 8, 2004

Respectfully submitted,

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