

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

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

FEDERAL TRADE COMMISSION,)
)
Plaintiff,)
)
v.)
)
1492828 ONTARIO INC., d/b/a FIRST CAPITAL)
CONSUMERS GROUP, US GUARDIAN UNITED)
CONSUMERS, TRANS AMERICA UNITED BENEFITS)
GROUP, TRANSGLOBAL NATIONAL CONSUMERS)
GROUP, and FIRST GUARDIAN NATIONAL)
BENEFITS,)
)
1533649 ONTARIO INC., d/b/a INTER OFFICE)
MARKETING SERVICES, CAPITAL)
COMMUNICATIONS, US GUARDIAN UNITED)
CONSUMERS, TRANS AMERICA UNITED BENEFITS)
GROUP, TRANSGLOBAL NATIONAL CONSUMERS)
GROUP, and FIRST GUARDIAN NATIONAL)
BENEFITS,)
)
DAVID DALGLISH,)
)
LESLIE ANDERSON,)
)
LLOYD PRUDENZA,)
)
MARK LENNOX, and)
)
PAUL SCHROEDER, d/b/a PAUL SCHROEDER &)
ASSOCIATES, PS&A, and YOUR BENEFITZ,)
)
Defendants.)

Civil Action No.
02 C 7456
Judge Guzman
Magistrate Judge Nolan

AMENDED COMPLAINT FOR PERMANENT INJUNCTION
AND OTHER EQUITABLE RELIEF

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

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, *et seq.*, to secure temporary, preliminary and permanent injunctive relief, restitution, rescission or reformation of contracts, 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), and the FTC’s Trade Regulation Rule entitled “Telemarketing Sales Rule,” 16 C.F.R. Part 310.

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction 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.
2. Venue in the United States District Court for the Northern District of Illinois is proper under 15 U.S.C. § 53(b) and 6103(e) and 28 U.S.C. § 1391(b), (c), and (d).

PLAINTIFF

3. Plaintiff, the FTC, is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58, as amended. 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. The Commission also enforces the Telemarketing Sales Rule, 16 C.F.R. Part 310, which prohibits deceptive or abusive telemarketing acts or practices. The Commission 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 for injured consumers. 15 U.S.C. §§ 53(b), 57b, 6102(c), and 6105(b).

DEFENDANTS

4. Defendant 1492828 Ontario Inc., d/b/a First Capital Consumers Group, US Guardian United Consumers, Trans America United Benefits Group, Transglobal National Consumers Group, and First Guardian National Benefits (“First Capital”), is an Ontario corporation with its offices and principal place of business located at 1992 Yonge St., Suite 201, Toronto, Ontario M4S 1Z8. First Capital transacts or has transacted business in the Northern District of Illinois and throughout the United States.

5. Defendant 1533649 Ontario Inc., d/b/a Inter Office Marketing Services, Capital Communications, US Guardian United Consumers, Trans America United Benefits Group, Transglobal National Consumers Group, and First Guardian National Benefits (“Inter Office Marketing”), is an Ontario corporation with its offices and principal place of business located at 1992 Yonge St., Suite 201, Toronto, Ontario M4S 1Z8. Inter Office Marketing transacts or has transacted business in the Northern District of Illinois and throughout the United States.

6. Defendant David Dalglish is an owner and director of First Capital and Inter Office Marketing. At all times relevant to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, or participated in the acts and practices of First Capital and Inter Office Marketing, including the acts and practices set forth in this Complaint. David Dalglish transacts or has transacted business in the Northern District of Illinois and throughout the United States.

7. Defendant Leslie Anderson is an owner and director of First Capital and a principal of Inter Office Marketing. At all times relevant to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, or participated in the acts and practices of First Capital and Inter Office Marketing, including the acts and practices set forth in this Complaint. Leslie Anderson transacts or has transacted business in the Northern District of Illinois and throughout the United States.

8. Defendant Lloyd Prudenza is a principal of First Capital and Inter Office Marketing. At all times relevant to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, or participated in the acts and practices of First Capital and Inter Office Marketing, including the acts and practices set forth in this Complaint. Lloyd Prudenza transacts or has transacted business in the Northern District of Illinois and throughout the United States.

9. Defendant Mark Lennox is a principal of First Capital and Inter Office Marketing. At all times relevant to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, or participated in the acts and practices of First Capital and Inter Office Marketing, including the acts and practices set forth in this Complaint. Mark Lennox transacts or has transacted business in the Northern District of Illinois and throughout the United States.

10. Defendants 1492828 Ontario Inc., 1533649 Ontario Inc., Dalglish, Anderson, Prudenza, and Lennox, described in Paragraphs 4 through 9 above, are referred to collectively as "First Capital Defendants."

11. Defendant Paul Schroeder is the sole proprietor of, and does business as, Paul Schroeder & Associates, PS&A, and Your Benefitz ("Defendant Schroeder"). Defendant

Schroeder's office and principal place of business is located at 43 North Bond St., Bel Air, Maryland 21014. Defendant Schroeder provides fulfillment services for First Capital Defendants, which includes providing a membership benefits package to First Capital Defendants' customers. Defendant Schroeder transacts or has transacted business in the Northern District of Illinois and throughout the United States.

COMMERCE

12. 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' COURSE OF CONDUCT

13. Since at least September 2001, and continuing thereafter, First Capital Defendants have made unsolicited outbound telephone calls to consumers throughout the United States and falsely offered to provide pre-approved credit cards to those consumers who agreed to permit the defendants to debit their bank accounts for an advance fee ranging from \$189.00 to \$219.00. First Capital Defendants' telemarketers tell consumers that the defendants are offering pre-approved MasterCard or Visa credit cards with low interest rates, credit limits of \$2,000 or \$2,500, and no annual fees. First Capital Defendants have targeted consumers with no credit or bad credit for their credit card offer.

14. During the telephone calls to consumers, First Capital Defendants request bank account information, including bank routing information.

15. First Capital Defendants routinely debit the bank accounts of consumers, who have provided bank account information and agreed to pay fees with bank account debits, in

advance of providing those consumers with the MasterCard or Visa credit cards promised during the telephone calls.

16. Instead of providing consumers with MasterCard or Visa credit cards, First Capital Defendants sometimes provide consumers with packets of materials containing information about obtaining credit, cellular telephones, magazines, automobile loans, legal services, discount prescription programs, free vacations, and occasionally, coupons relating to travel, entertainment and miscellaneous products and services.

17. First Capital Defendants occasionally provide consumers with cards, described as “stored value cards” that can only be used if the consumer deposits in an account sufficient sums of money to pay for purchases made with the card.

18. On behalf of First Capital Defendants, Defendant Schroeder compiles and mails the fulfillment packages, *i.e.*, “membership benefits packages,” described in Paragraphs 15 and 16 above, to First Capital Defendants’ customers.

19. First Capital Defendants do not provide consumers with, or arrange for consumers to receive, credit cards or other extensions of credit. Furthermore, First Capital Defendants are not authorized by MasterCard or Visa to issue or market MasterCard or Visa credit cards to the public, or even to use MasterCard or Visa trademarks in their promotions.

VIOLATIONS OF THE FEDERAL TRADE COMMISSION ACT

20. 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 prohibited by Section 5(a) of the FTC Act.

COUNT I

(As to First Capital Defendants)

21. In numerous instances, in connection with the marketing of advance fee credit cards, First Capital Defendants or their employees or agents have represented, directly or by implication, that after paying First Capital Defendants a fee, consumers will, or are highly likely to, receive an unsecured major credit card, such as a MasterCard or Visa credit card.

22. In truth and in fact, in numerous instances, after paying First Capital Defendants a fee, consumers do not receive an unsecured major credit card, such as a MasterCard or Visa credit card.

23. Therefore, the representation set forth in Paragraph 21 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).

THE TELEMARKETING SALES RULE

24. The Commission promulgated the Telemarketing Sales Rule pursuant to Section 6102(a) of the Telemarketing Act, 15 U.S.C. § 6102(a). The Rule became effective on December 31, 1995.

25. The FTC Telemarketing Sales Rule prohibits telemarketers and sellers from misrepresenting any material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of a sales offer. 16 C.F.R. § 310.3(a)(2)(iii).

26. The Telemarketing Sales Rule also prohibits telemarketers and sellers from, among other things, requesting or receiving payment of any fee or consideration in advance of

obtaining or arranging a loan or other extension of credit when the seller or telemarketer has guaranteed or represented a high likelihood of success in obtaining or arranging a loan or other extension of credit. 16 C.F.R. § 310.4(a)(4).

27. The Telemarketing Sales Rule also prohibits any person from providing substantial assistance or support to any seller or telemarketer when that person knows or consciously avoids knowing that the seller or telemarketer is engaged in any act or practice in violation of the Telemarketing Sales Rule. 16 C.F.R. § 310.3(b).

28. 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).

29. First Capital Defendants are “sellers” or “telemarketers” engaged in “telemarketing,” as those terms are defined in the Telemarketing Sales Rule, 16 C.F.R. §§ 310.2(r), (t) & (u), and Defendant Schroeder is a “person” as that term is defined in the Telemarketing Sales Rule. 16 C.F.R. § 310.2(o).

VIOLATIONS OF THE TELEMARKETING SALES RULE

COUNT II

(As to First Capital Defendants)

30. In numerous instances, in connection with the telemarketing of advance fee credit cards, First Capital Defendants or their employees or agents have misrepresented, directly or by implication, that after paying First Capital Defendants a fee, consumers will, or are highly likely to, receive an unsecured major credit card, such as a MasterCard or Visa credit card.

31. First Capital Defendants have thereby violated Section 310.3(a)(2)(iii) of the Telemarketing Sales Rule, 16 C.F.R. § 310.3(a)(2)(iii).

COUNT III

(As to First Capital Defendants)

32. In numerous instances, in connection with the telemarketing of advance fee credit cards, First Capital Defendants or their employees or agents have requested and received payment of a fee in advance of consumers obtaining a credit card when defendants have guaranteed or represented a high likelihood of success in obtaining or arranging for the acquisition of an unsecured credit card, such as a MasterCard or Visa credit card, for such consumers.

33. First Capital Defendants have thereby violated Section 310.4(a)(4) of the Telemarketing Sales Rule, 16 C.F.R. § 310.4(a)(4).

COUNT IV

(As to Defendant Schroeder)

34. In numerous instances, in connection with providing various services to the First Capital Defendants, including fulfillment services, Defendant Schroeder has provided substantial assistance or support to the First Capital Defendants, knowing or consciously avoiding knowing that the First Capital Defendants are engaged in acts or practices that violate §§ 310.3(a)(2)(iii) and 310.4(a)(4), as set forth in Paragraphs 30 through 33 above. Defendant Schroeder has thereby violated Section 310.3(b) of the Rule, 16 C.F.R. § 310.3(b).

CONSUMER INJURY

35. Consumers throughout the United States have suffered and continue to suffer substantial monetary loss as a result of defendants' unlawful acts and practices. In addition, defendants have been unjustly enriched as a result of their unlawful acts and practices. Absent injunctive relief by this Court, the defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

36. 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), empower this Court to issue a permanent injunction against defendants' violations of the FTC Act and the Telemarketing Sales Rule, and, in the exercise of its equitable jurisdiction, to order such ancillary relief as a preliminary injunction, rescission, restitution, disgorgement of profits resulting from defendants' unlawful acts or practices, and other remedial measures.

PRAYER FOR RELIEF

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

1. Award plaintiff such 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, including but not limited to, temporary and preliminary injunctions, and an order freezing assets;

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

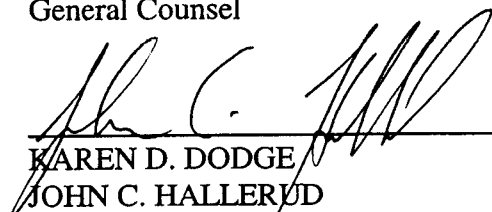
3. Award such relief as the Court finds necessary to redress injury to consumers resulting from defendants' violations of the FTC Act and the Telemarketing Sales Rule, including, but not limited to, rescission or reformation of contracts, restitution, refund of monies paid, and disgorgement of ill-gotten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

4. 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.

Dated: December 30, 2002

Respectfully Submitted,

WILLIAM E. KOVACIC
General Counsel



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