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IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

BOOKSPAN, a Delaware general partnership,

Defendant.

Civil No. IN CLERK'S OFFICE U.S. DISTRICT COURT, E.D.N.Y. FEB 23 2006 BROOKLYN OFFICE

HURLEY, J.

LINDSAY, M.J.

COMPLAINT FOR CIVIL PENALTIES, PERMANENT INJUNCTION, AND OTHER RELIEF

Plaintiff, the United States of America, acting upon notification and authorization to the Attorney General by the Federal Trade Commission ("FTC" or "Commission"), pursuant to Section 16(a)(1) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 56(a)(1), for its complaint alleges:

- 1. Plaintiff brings this action under Sections 5(a), 5(m)(1)(A), 13(b) and 16(a) of the FTC Act, 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b) and 56(a), and Section 6 of the Telemarketing and Consumer Fraud and Abuse Prevention Act (the "Telemarketing Act"), 15 U.S.C. § 6105, to obtain monetary civil penalties, a permanent injunction, and other equitable relief for defendant's violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the FTC's Telemarketing Sales Rule (the "TSR" or "Rule"), 16 C.F.R. Part 310, as amended by 68 Fed. Reg. 4580, 4669 (January 29, 2003).

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355, and 15 U.S.C. §§ 45(m)(1)(A), 53(b), 56(a) and 57b. This action arises under 15 U.S.C. § 45(a).
3. Venue is proper in this District under 28 U.S.C. §§ 1391(b)-(c) and 1395(a), and 15 U.S.C. § 53(b).

DEFENDANT

4. Defendant Bookspan ("Bookspan") is a Delaware general partnership, with its principal place of business at 401 Franklin Avenue, Garden City, New York 11530. Bookspan is a seller and telemarketer of book products that initiates outbound telephone calls to induce consumers to purchase goods or services. Bookspan transacts or has transacted business in this District.

**THE TELEMARKETING SALES RULE
AND THE NATIONAL DO NOT CALL REGISTRY**

5. Congress directed the FTC to prescribe rules prohibiting abusive and deceptive telemarketing acts or practices pursuant to the Telemarketing Act, 15 U.S.C. §§ 6101-6108, in 1994. On August 16, 1995, the FTC adopted the Telemarketing Sales Rule (the "Original TSR"), 16 C.F.R. Part 310, which became effective on December 31, 1995. On January 29, 2003, the FTC amended the TSR by issuing a Statement of Basis and Purpose ("SBP") and the final amended TSR (the "Amended TSR"). 68 Fed. Reg. 4580, 4669.
6. Among other things, the Amended 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 donotcall.gov.

7. 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 donotcall.gov, or by otherwise contacting law enforcement authorities.
8. Since October 17, 2003 sellers and telemarketers have been prohibited from calling numbers on the Registry in violation of the Amended TSR. 16 C.F.R. §310.4(b)(1)(iii)(B).
9. Since December 31, 1995, sellers and telemarketers have been prohibited from initiating an outbound telephone call to any person when that person previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the seller whose goods or services are being offered. 16 C.F.R. § 310.4(b)(1)(iii)(A).
10. Since September 2, 2003, sellers, telemarketers, and other permitted organizations have been able to access the Registry over the Internet at telemarketing.donotcall.gov to download the registered numbers.
11. 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), a violation of the TSR constitutes an unfair or deceptive act or practice in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

DEFENDANT'S BUSINESS ACTIVITIES

12. Bookspan is a "seller" or "telemarketer" engaged in "telemarketing," as defined by the Amended TSR, 16 C.F.R. § 310.2. Bookspan has engaged in telemarketing by a plan, program or campaign conducted to induce the purchase of goods or services by use of one or more telephones and which involves more than one interstate telephone call. Bookspan initiates, or causes others to initiate on its behalf, outbound telephone calls to consumers in the United States to induce the purchase of its goods or services. In particular, Bookspan has contracted out such calls to six outside vendors.
13. Bookspan markets and sells its book products to consumers through a variety of book clubs. Consumers who join one of Bookspan's book clubs generally receive a number of books at a reduced price in return for undertaking the obligation to purchase a designated number of additional books at regular club prices over a designated period of time.
14. In most instances, Bookspan does not contact new prospective customers by telephone. Instead, Bookspan's telemarketing campaigns are directed primarily to those consumers who are existing or former members of one of Bookspan's book clubs. In its telemarketing campaigns, Bookspan generally solicits existing members to purchase additional products, and it solicits former members to re-enlist in one of its clubs.
15. Bookspan registered to access the National Do Not Call registry on September 8, 2003, and paid to access all area codes in the United States. Since registering, Bookspan or its agents have regularly accessed the Registry.
16. On or after October 17, 2003, Bookspan called, or caused others to call on its behalf, telephone numbers that are on the National Do Not Call registry. Under the Amended TSR, Bookspan is permitted to call numbers on the Registry that belong to consumers

with whom it has an "established business relationship," unless the consumer has stated that he or she does not wish to receive calls from Bookspan. 16 C.F.R. § 310.4(b)(1)(iii)(B)(ii). An "established business relationship" means, among other things, "a financial transaction between the consumer and seller, within the eighteen (18) months immediately preceding the date of a telemarketing call." 16 C.F.R. § 310.2(n)(1). In numerous instances, Bookspan did not have an "established business relationship" under the Amended TSR with the consumers who were called.

17. From about October 17, 2003 to about August 10, 2004, over one hundred thousand calls were made by or on behalf of Bookspan to telephone numbers on the Registry, for which Bookspan did not have an "established business relationship" with the consumer who was called. Bookspan thus failed to establish an affirmative defense for the call, in violation of the Amended TSR.
18. From about October 17, 2003 to about August 10, 2004, Bookspan called, or caused others to call on its behalf, tens of thousands of consumers who have previously stated that they do not wish to receive calls made by or on behalf of Bookspan.
19. Bookspan maintains a list of those consumers who have previously stated that they do not wish to receive telephone calls made by or on behalf of Bookspan. Bookspan has implemented procedures to attempt to insure that such consumers do not receive additional calls. However, those procedures were not sufficient to prevent the calls alleged in the preceding paragraph.
20. At all times relevant to this complaint, Bookspan has maintained a substantial course of trade or business in the offering for sale and sale of goods or services via the telephone, in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15

U.S.C. § 44.

VIOLATION OF THE TELEMARKETING SALES RULE

Count I

Violating the National Do Not Call Registry

21. In numerous instances, in connection with telemarketing, defendant engaged in or caused others to engage in initiating an outbound telephone call to a person's telephone number on the National Do Not Call Registry in violation of the TSR, 16 C.F.R. § 310.4(b)(1)(iii)(B).

Count II

Entity-Specific Do Not Call Requests

22. In numerous instances, in connection with telemarketing, defendant engaged in or caused others to engage in initiating an outbound telephone call to a person who has previously stated that he or she does not wish to receive such a call made by or on behalf of the seller whose goods or services are being offered in violation of the TSR, 16 C.F.R. § 310.4(b)(1)(iii)(A).

CONSUMER INJURY

23. Consumers in the United States have suffered and will suffer injury as a result of defendant's violations of the TSR. Absent injunctive relief by this Court, defendant is likely to continue to injure consumers and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

24. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and other ancillary relief to prevent and remedy any violation of any provision of law enforced by the FTC.
25. Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A), as modified by Section 4

of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended, and as implemented by 16 C.F.R. § 1.98(d) (1997), authorizes this Court to award monetary civil penalties of not more than \$11,000 for each violation of the TSR. Defendant's violations of the TSR were committed with the knowledge required by Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A).

26. This Court, in the exercise of its equitable jurisdiction, may award ancillary relief to remedy injury caused by defendant's violations of the Rule and the FTC Act.

PRAYER FOR RELIEF

WHEREFORE, plaintiff requests that this Court, as authorized by Sections 5(a), 5(m)(1)(A), 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b) and 57b, and pursuant to its own equitable powers:

1. Enter judgment against defendant and in favor of plaintiff for each violation alleged in this complaint;
2. Award plaintiff monetary civil penalties from defendant for every violation of the TSR;
3. Permanently enjoin defendant from violating the TSR and the FTC Act;
4. Order defendant to pay the costs of this action; and
5. Award plaintiff such other and additional relief as the Court may determine to be just and proper.

Respectfully submitted,

FOR THE UNITED STATES OF AMERICA

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DATED: Feb. 23, 2006

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