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JAMES N. HATTEN, Clerk
By: *[Signature]*
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

WISE MEDIA, LLC, a limited liability
company,

BRIAN M. BUCKLEY, individually and
as an officer of WISE MEDIA, LLC, and

WINSTON J. DELONEY, individually
and as a member of WISE MEDIA, LLC,

Defendants, and

CONCRETE MARKETING RESEARCH,
LLC, a limited liability company,

Relief Defendant.

Case No.

1: 13-CV-1234

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

Plaintiff, the Federal Trade Commission ("FTC"), for its Complaint alleges:

1. The FTC brings this action under Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), to obtain temporary, preliminary, and permanent injunctive relief, rescission or reformation of contracts, restitution, the refund of monies paid, disgorgement of ill-gotten monies, and other equitable relief for Defendants' acts or practices in violation of Section 5(a) of the

FTC Act, 15 U.S.C. § 45(a). As explained herein, Defendants are engaged in a widespread scheme to place unauthorized third-party charges on consumers' mobile phone bills, a harmful and illegal practice known as "cramming."

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a) and 53(b).

3. Venue is proper in this district under 28 U.S.C. § 1391(b), (c), and (d), and 15 U.S.C. § 53(b).

PLAINTIFF

4. The FTC is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58. The FTC enforces 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.

5. The FTC is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act and to secure such equitable relief as may be appropriate in each case, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies. 15 U.S.C. §§ 53(b) and 56(a)(2)(A).

DEFENDANTS

6. Defendant Wise Media, LLC (“Wise Media”), is a Georgia limited liability corporation. Its registered address is a drop-box at a UPS store at 1911 Grayson Highway, Grayson, Georgia 30017, and, on information and belief, its principal place of business is 3405 Piedmont Road, Atlanta, Georgia 30305. Wise Media transacts or has transacted business in this district and throughout the United States.

7. Defendant Brian M. Buckley (“Buckley”) is the CEO and has stated that he is a partial owner of Wise Media. At all times material to this Complaint, acting alone or in concert with others, Buckley has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of Wise Media, including the acts and practices set forth in this Complaint. Defendant Buckley resides in this district and, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

8. Defendant Winston J. Deloney (“Deloney”) is an owner of Wise Media. At all times material to this Complaint, acting alone or in concert with others, Deloney has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of Wise Media, including the acts and

practices set forth in this Complaint. Defendant Deloney resides in this district and, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States. Defendants Wise Media, Buckley, and Deloney are collectively referred to as “Defendants” throughout this Complaint.

9. Relief Defendant Concrete Marketing Research, LLC (“Concrete Marketing”) is a Georgia limited liability corporation that has received funds that can be traced directly to Defendants’ deceptive and unfair acts or practices alleged below, and that has no legitimate claim to those funds. Winston Deloney is an owner of Concrete Marketing. Concrete Marketing is incorporated in Georgia and its registered address is a P.O. Box in Lilburn, Georgia, in this district.

COMMERCE

10. At all times material 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’ ACTIVITIES

11. Defendants operate a scam in which they bill consumers for text message-based subscription services even though the consumers did not authorize any purchase of the services. Defendants’ purported services have included

sending periodic text messages containing horoscope alerts, “flirting tips,” “love tips,” and similar kinds of information. Using the billing mechanisms of mobile phone companies, Defendants cause unauthorized charges for these services to be placed on consumers’ mobile phone bills, often with abbreviated and uninformative descriptions. Many consumers pay their mobile phone bills without ever noticing these charges; others pay and then unsuccessfully dispute the third-party charge without obtaining a refund; still others dispute the charges and succeed in having them removed only after substantial effort. Defendants have made millions of dollars to date from placing charges on consumers’ mobile phone bills.

The Placement of Third-Party Charges on Phone Bills

12. Mobile phone bills can include charges for so-called “Premium SMS” services provided by third-party merchants other than consumer’s mobile phone company. Premium SMS services allow consumers to purchase digital goods or services by using text messages (also known as “SMS” messages) sent to and from their mobile phone. For example, a merchant – known in this context as a “content provider” – may offer digital content, such as a game that can be played on a consumer’s phone, which can be ordered and purchased by the consumer using text

messaging. The charge for the service is placed on the consumer's monthly mobile phone bill.

13. In order to send and receive commercial text messages to consumers and place charges on a mobile phone bill, a content provider uses a five- to six-digit number called a "short code." The content provider enters into agreements – often via a third party known as an "aggregator" – to place charges on specific mobile carriers' mobile phone bills. The content provider typically advertises to consumers and instructs them on how to order the service via text message. Under standard industry practice, the content provider generally requires the consumer to take two steps to confirm a purchase, a practice that is known as "double opt-in" verification. The content provider is responsible for delivering the digital content to the mobile consumer's phone, and it bills the consumer and collects charges by having the phone company place the appropriate charge on the consumer's bill.

Defendants' Scam

14. Defendants purport to provide a number of Premium SMS services through various short codes. However, unlike legitimate content providers, Defendants do not obtain consumers' knowing agreement to pay for their purported services. Instead, they place the charges onto consumers' phone bills

without their consent, and profit when consumers pay their phone bills without noticing these unauthorized charges.

15. The placement of unauthorized third-party charges on consumers' phone bills is known as "cramming." Cramming has been a huge problem on landline phone bills for years. The FTC has brought over two dozen cases to date to halt cramming practices and provide redress to victims of these unauthorized charges. *See, e.g., FTC v. Inc21.com Corp.*, 745 F. Supp. 2d 975 (N.D. Cal. 2010), *aff'd*, 2012 WL 1065543 (9th Cir. Mar. 30, 2012); Stipulated Order, *FTC v. Nationwide Connections, Inc.*, No. 06-80180 (S.D. Fla. Sept. 18, 2008); Stipulated Orders, *FTC v. 800 Connect, Inc.*, No. 03-CIV-60150 (S.D. Fla. Feb. 4, 2003); Stipulated Order, *FTC v. Access Resources Servs., Inc.*, No. 02-CIV-60336 (S.D. Fla. Nov. 4, 2002). Cramming charges onto phone bills is a both an unfair and deceptive practice in violation of Section 5 of the FTC Act, 15 U.S.C. § 45(a). *See Inc21.com*, 745 F. Supp. 2d at 1003, 1005.

16. In this case, Wise Media has offered its purported services using multiple short codes. For example, it has offered a subscription service called "HoroscopeGenie" (www.horoscopegenie.com), which purportedly provides three horoscope-related messages a week by text message, using the short code 27140. It also advertised a subscription service called "Long Life Love Tips"

(www.longlifelovetips.com) which purportedly provides three “flirting tips” a week by text message, using the short code 84930. Each subscription costs \$9.99 per month, and automatically renews every month. Wise Media has offered similar kinds of services using other short codes as well. Defendants have operated and billed for Wise Media services on multiple mobile phone networks.

17. Defendants charge many consumers for Wise Media’s purported services by placing charges on the consumers’ mobile phone bills, without the consumers ever knowingly signing up for such services. In many instances, consumers have received text messages suggesting that they have been subscribed to Wise Media’s services, which may appear to consumers merely to be spam text messages that the consumer ignores. Even if consumers respond via text indicating that they do not want Wise Media services, the consumers are still charged for those services on their mobile phone bills. Wise Media places and collects these charges even though the consumers do not knowingly consent to sign up for the services that Wise Media purportedly provides, whether by a “double opt-in” or any other process in which a consumer provides express informed consent to the charges.

18. Many consumers do not notice Wise Media’s charges included on their mobile phone bills, and pay their bills in full. Wise Media’s charges appear

on a bill in an abbreviated form that does not always identify Wise Media as the source of the charge. For example, in many cases, the billing descriptor for Wise Media's horoscope service was "27140 HoroGenie Alert" or "HoroscopeGenieAlert." Similarly, in many cases, the billing descriptor for Wise Media's "love tips" services was "84930 Love Tips 9.99" or "LongLifeLoveTips Alerts." The \$9.99 per month charge is included in the total amount due for the entire mobile phone bill. Consumers may not notice slight variations in their bill totals from month to month. Indeed, consumers billed by Wise Media often did not notice the charges on their bills. Further, the charges recur – unless a consumer notices the charge and takes action to unsubscribe, the consumer is charged \$9.99 each month.

19. In some cases, consumers have noticed the unauthorized charges on their mobile phone bills and have attempted to dispute those charges and/or any additional Wise Media-related charges that they may have paid in the past. This process is difficult and often unsuccessful. In many cases, it is difficult to find contact phone numbers for Wise Media because no phone number is provided with the description on the mobile phone bill. If consumers are able to find a phone number, they often reach representatives who claim they will provide refunds, but

do not. In many cases, consumers cannot get refunds for all of the months that they paid the bogus charges.

20. From the beginning of Wise Media's operations in mid- to late-2011, those consumers who have noticed the crammed charges have complained in significant numbers: phone companies refunded up to 30-40% of all Wise Media charges on certain short codes in some early months, and one phone company even warned Wise Media about its excessive refunds in late 2011. Over the past year, phone companies have continued to refund over 10% of all charges in many months, often much higher, from the consumers who manage to discover the scam. At times, Wise Media has received hundreds of calls a day from customers who were able to identify phone contact numbers for the company. Wise Media has also continued to receive Better Business Bureau and other complaints from consumers who did not affirmatively sign up for Defendants' services. By mid-2012, one major phone company had even terminated Wise Media based on its excessive refund rates. Another terminated Wise Media as well while providing consumer refunds that ultimately amounted to *over 55%* of all charges Wise Media placed on some of its short codes. However, for at least several months, Defendants continued to bill and collect unauthorized charges to consumers

through at least one other phone company with whom they continued to do business.

21. Notwithstanding that many consumers have complained and that some phone companies have terminated business with Wise Media, Defendants have made millions from Wise Media's charges to date.

22. All of the Defendants participate in and profit from this activity. Defendant Buckley is at the center of Wise Media's fraudulent operations. As CEO, Buckley controls Wise Media's activities and is directly responsible for Wise Media's fraudulent billing. For example, he has set up the bogus "refund lines" for Wise Media, the UPS box that Wise Media uses for its official mailing address and to which it receives complaints, and the websites associated with Wise Media's services. He is also the contact in Wise Media's dealing with the mobile phone companies that bill for Wise Media's services. He has personally signed refund checks to consumers on behalf of Wise Media. He has knowledge and control of Wise Media's deceptive behavior.

23. Defendant Deloney is an owner of Wise Media. He directs, participates in, and profits from Wise Media's fraudulent operations, including dealing with and making payments to employees and/or agents acting on behalf of Wise Media and managing Wise Media's bank account. He has paid for Wise

Media's bogus "refund lines" and the websites associated with Wise Media's services. He has received over one million dollars from Wise Media directly or via companies under his control. He has knowledge and control of Wise Media's deceptive behavior.

24. Relief Defendant Concrete Marketing has received hundreds of thousands of dollars in monetary transfers from Defendant Wise Media, at the direction of Defendants Buckley and Deloney. These funds can be traced directly to Defendants' revenues from their cramming activities. Concrete Marketing has no legitimate claim to these funds.

VIOLATIONS OF THE FTC ACT

25. 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 deceptive omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act. Here, Defendants have made or caused to be made misrepresentations on consumers' phone bills that consumers were obligated to pay for charges for Wise Media services that they never ordered or knowingly ordered. Those misrepresentations are material and have caused harm to consumers.

26. Acts or practices are unfair under Section 5 of the FTC Act if they cause substantial injury to consumers that consumers cannot reasonably avoid themselves and that is not outweighed by countervailing benefits to consumers or competition. 15 U.S.C. § 45(n). Here, Defendants have engaged in the widespread practice of charging consumers for services without consumers' authorization for the charges, causing harm to consumers that they cannot reasonably avoid, without any remotely countervailing benefit to consumers or competition.

COUNT I

Deceptive Acts and Practices in Violation of Section 5 of the FTC Act – Defendants

27. Plaintiff incorporates the allegations in Paragraphs 1 through 26 in their entirety.

28. In numerous instances in connection with the sale of Premium SMS services, including horoscope messages, love tips, and similar services, Defendants have represented, directly or indirectly, expressly or by implication, that consumers are obligated to pay for charges for Defendants' Premium SMS services appearing on consumers' mobile phone bills.

29. In truth and in fact, in numerous instances in which Defendants have made the representations set forth in Paragraph 28 of this Complaint, consumers were not obligated to pay the charges because the consumers did not authorize

charges for Defendants' services corresponding to the charges on the bill. The representations on consumers' phone bills are material and have caused consumers to pay for the unauthorized charges.

30. Therefore, Defendants' representations as set forth in Paragraph 28 of this Complaint are false or misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT II

Unfair Billing Practices in Violation of Section 5 of the FTC Act - Defendants

31. Plaintiff incorporates the allegations in Paragraphs 1 through 26 in their entirety.

32. In numerous instances, Defendants have caused consumers' telephone accounts to be billed without having previously obtained the consumers' express informed consent.

33. Defendants' actions have caused or are likely to cause substantial injury to consumers that consumers cannot reasonably avoid themselves and that is not outweighed by countervailing benefits to consumers or competition.

34. Therefore, Defendants' practices as set forth in Paragraph 32 constitute unfair acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45(a) and (n).

COUNT III

Relief Defendant

35. Plaintiff incorporates the allegations in Paragraphs 1 through 26 in their entirety.

36. Relief Defendant Concrete Marketing has received, directly or indirectly, funds or other assets from Defendants that are traceable to funds obtained from Defendants' deceptive and unfair acts or practices described herein.

37. Relief Defendant is not a bona fide purchaser with legal and equitable title to Defendants' ill-gotten funds or other assets and has no legitimate claim to those funds or assets, and Relief Defendant will be unjustly enriched if it is not required to disgorge the funds or the value of the benefits received as a result of Defendants' deceptive and unfair acts or practices.

38. By reason of the foregoing, Relief Defendant holds funds and assets in constructive trust for the benefit of the consumers whose funds have been obtained by Defendants' deceptive and unfair acts or practices.

CONSUMER INJURY

39. Consumers have suffered and will continue to suffer substantial injury as a result of Defendants' violations of the FTC Act. In addition, Defendants have been unjustly enriched as a result of their unlawful acts or practices. Absent

injunctive relief by this Court, Defendants are likely to injure consumers, reap unjust enrichment, and harm the public interest.

THIS COURT’S POWER TO GRANT RELIEF

40. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and other such relief as the Court may deem appropriate to halt and redress violations of any provision of law enforced by the FTC. The Court, in the exercise of its equitable jurisdiction, may award ancillary relief, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies, to prevent and remedy any violation of any provision of law enforced by the FTC.

PRAYER FOR RELIEF

Wherefore, Plaintiff FTC, pursuant to Section 13(b) of the FTC Act, § 53(b), and the Court’s own equitable powers, requests that the Court:

- A. Enter such preliminary 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, a temporary and preliminary injunction, asset freeze, appointment of a receiver, an evidence preservation order, and expedited discovery;

- B. Enter a permanent injunction to prevent future violations of the FTC Act by Defendants;
- C. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act, including, but not limited to, rescission and reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies;
- D. Enter an order requiring Relief Defendant to disgorge all funds and assets, or the value of the benefit it received from the funds and assets, which are traceable to Defendants' deceptive and unfair acts or practices; and

E. 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.

Respectfully submitted,

FEDERAL TRADE COMMISSION

David C. Shonka
Acting General Counsel



Duane Pozza, DC Bar No. 490167

Phone: 202-326-2042

Fax: 202-326-3629

Email: dpozza@ftc.gov

Robin Thurston, IL Bar No. 6293950

Phone: 202-326-2752

Fax: 202-326-3629

Email: rthurston@ftc.gov

Federal Trade Commission

600 Pennsylvania Avenue, NW, NJ-3158

Washington, DC 20580

Robin Rock, GA Bar No. 629532

Phone: 404-656-1368

Fax: 404-656-1379

Email: rrock@ftc.gov

Federal Trade Commission

225 Peachtree St., NE, Suite 1500

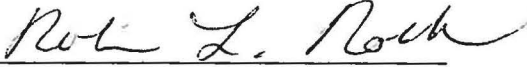
Atlanta, GA 30303

Counsel for Federal Trade Commission

Dated: 4/16/13

Certification of Compliance With Local Rule 5.1B

The undersigned counsel of record certifies this document was prepared in font and point selections approved by the Court pursuant to LR5.1B.


Robin Rock