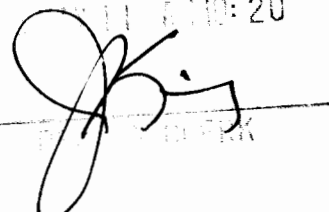


UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA

U.S. DISTRICT COURT
ORIGINAL
FILED: 20


FEDERAL TRADE COMMISSION,

Plaintiff,

vs.

FRANKLY SPEAKING, INC.;
PLASTICASH, INC;
DONALD J. LASKER; and
BONNIE KRIEBEL aka BONNIE LASKER,

Defendants.

Civil Action No. 1:05-CV-60(WCS)

COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF

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

1. 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. §§ 6101-6108, to obtain permanent injunctive relief, rescission of contracts, redress, restitution, disgorgement, 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), and violation of the FTC’s Telemarketing Sales Rule as amended, 16 C.F.R. Part 310.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345, and under 15 U.S.C. §§ 45(a), 53(b), 57b, 6102(c), and 6105(b).

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

THE PARTIES

4. Plaintiff, FTC, is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41 *et seq.* The FTC 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 FTC also enforces the Telemarketing Sales Rule, 16 C.F.R. Part 310, which prohibits deceptive and abusive telemarketing acts or practices. The FTC 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 redress, restitution and disgorgement. 15 U.S.C. §§ 53(b), 57b, 6102(c) and 6105(b).

DEFENDANTS

5. Defendant Frankly Speaking, Inc. (“Frankly Speaking”) is a Florida corporation with its registered place of business at 204 37th Avenue North, #344, St. Petersburg, Florida 33704. Frankly Speaking transacts or has transacted business in the Middle District of Georgia. Although Frankly Speaking is organized as a nonprofit corporation, it operates for the economic benefit of private persons and/or for-profit companies, and is therefore a “corporation” within the meaning of Sections 4 and 5(a) of the FTC Act, 15 U.S.C. §§ 44 and 45(a).

6. Defendant Plasticash, Inc. (“Plasticash”) was at all times relevant to this Complaint, a Florida corporation with its registered place of business at 204 37th Avenue North,

#344, St. Petersburg, Florida 33704. Plasticash transacts or has transacted business in the Middle District of Georgia.

7. Defendant Donald J. Lasker is the Director and Chief Executive Officer of Frankly Speaking and the President of Plasticash. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, or participated in the acts or practices set forth in this Complaint. Defendant Lasker transacts or has transacted business in the Middle District of Georgia.

8. Defendant Bonnie Kriebel aka Bonnie Lasker (“Bonnie Kriebel”) is the Secretary of Plasticash and is the registered agent for service of process for Frankly Speaking. At all times material to this Complaint, acting alone or in concert with others, she has formulated, directed, controlled, or participated in the acts or practices set forth in this Complaint. Defendant Kriebel transacts or has transacted business in the Middle District of Georgia.

COMMERCE

9. At all times relevant to this Complaint, Defendants have maintained a substantial course of trade or business in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS’ BUSINESS ACTIVITIES

10. At various times since 2002, Defendants have engaged in telemarketing by a plan, program, or campaign conducted to induce the purchase of goods and services or a charitable contribution, by use of one or more telephones and which involved more than one interstate telephone call.

11. Defendants employed an automatic dialing machine to cold-call consumers with

their pre-recorded messages. Defendants' pre-recorded messages stated that they were offering purportedly free goods and services, such as vacation travel packages and magazine subscriptions, at no charge except for a small "9.95 shipping and handling fee." Defendants instructed consumers to hang up or "press 1 now" to reject their offer.

12. Thereafter, Defendants billed consumers' credit cards in the amount of \$9.95 without first obtaining consumers' express authorization or identifying to consumers the specific accounts to be billed.

13. Defendants possessed preacquired billing account information, such as credit card numbers, which enabled them to bill consumers without their knowledge or consent.

14. In numerous instances, consumers stated they did not recall ever receiving a telephone call and only learned of the charge when they discovered it on their credit card statements.

15. In numerous other instances, consumers received a message on their answering machine and chose to ignore the call, believing that Defendants did not have their account information and could not charge their accounts without their express permission.

16. Still other consumers reported that they neither recalled receiving a telephone call, or noticed the charge, until they received a letter in the mail from Defendants which thanked consumers for their payment.

17. In each of these cases, Defendants billed these consumers without the consumers' knowledge or express authorization and without identifying the specific accounts to be charged.

18. On or after October 17, 2003, Defendants Frankly Speaking, Donald J. Lasker and Bonnie Kriebel called, or caused others to call, consumers' telephone numbers that are on the National Do Not Call Registry.

19. On or after October 17, 2003, Defendants Frankly Speaking, Donald J. Lasker and Bonnie Kriebel called, or caused others to call, consumers' telephone numbers in various area codes without first paying the annual fee for access to the telephone numbers within such area codes that are included in the National Do Not Call Registry.

SECTION 5 OF THE FTC 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." An act or practice is unfair if it causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

COUNT I - Section 5 - Unauthorized Billing

21. Paragraphs 1 through 19 are incorporated by reference.

22. In numerous instances, in connection with the marketing of goods and services, Defendants caused charges to be billed to consumers' credit cards without the consumers' authorization.

23. Defendants' practice caused or was likely to have caused substantial injury to consumers that was not reasonably avoidable by the consumers and was not outweighed by countervailing benefits to consumers or to competition.

24. Therefore, Defendants' practice, as alleged in Paragraph 22, was unfair and violated Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

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

25. In 1994, 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. On August 16, 1995, the FTC adopted the Telemarketing Sales Rule, 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 and the final amended Telemarketing Sales Rule. 68 Fed. Reg. 4580, 4669 ("Amended TSR").

26. Among other things, the Amended TSR prohibits sellers and telemarketers from causing billing information to be submitted for payment, directly or indirectly, without the express informed consent of the customer or donor. In any telemarketing transaction involving preacquired account information, express informed consent must be met by, at a minimum, identifying the account to be charged with sufficient specificity for the customer to understand what account will be charged and obtaining the customers' express agreement to be charged for the goods or services using the account number specified. 16 C.F.R. § 310.4(a)(6)(ii).

27. The Amended TSR also established a "do-not-call" registry, maintained by the Commission (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.

28. 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.

29. 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.

30. Since October 17, 2003, sellers and telemarketers subject to the FTC's jurisdiction 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).

31. Since October 17, 2003, sellers and telemarketers have been generally prohibited from calling any telephone number within a given area code unless the seller first has paid the annual fee for access to the telephone numbers within that area code that are included in the National Do Not Call Registry. 16 C.F.R. § 310.8(a) and (b).

32. 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).

33. Defendants are "sellers" or "telemarketers" engaged in "telemarketing" as defined by the Amended TSR, 16 C.F.R. § 310.2(z), (bb) and (cc).

VIOLATIONS OF THE TELEMARKETING SALES RULE

COUNT II - TSR Violations - Unauthorized Billing

34. Paragraphs 1 through 19 are incorporated by reference.

35. In numerous instances, in connection with the telemarketing of goods and services, Defendants Frankly Speaking, Donald J. Lasker and Bonnie Kriebel caused charges to be billed to consumers' credit cards without the consumers' express informed consent in violation of the Amended TSR, 16 C.F.R. § 310.4(a)(6).

COUNT III - TSR Violations - Violating the National Do Not Call Registry

36. Paragraphs 1 through 19 are incorporated by reference.

37. In numerous instances, in connection with telemarketing, Defendants Frankly Speaking, Donald J. Lasker and Bonnie Kriebel 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 Amended TSR, 16 C.F.R. § 310.4(b)(1)(iii)(B).

COUNT IV - TSR Violations - Failing to Pay National Registry Fees

38. Paragraphs 1 through 19 are incorporated by reference.

39. In numerous instances, in connection with telemarketing, Defendants Frankly Speaking, Donald J. Lasker and Bonnie Kriebel have initiated, or caused others to initiate, an outbound telephone call to a telephone number within a given area code without first paying the required annual fee for access to the telephone numbers within that area code that are included in the National Do Not Call Registry, in violation of the Amended TSR, 16 C.F.R. § 310.8.

CONSUMER INJURY

40. Consumers in the United States have suffered and will suffer injury as a result of Defendants' violations of the FTC Act and the Amended TSR. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

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

42. Section 19 of the FTC Act, 15 U.S.C. § 57b, and Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b), authorize 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 TSR, including the rescission and reformation of contracts, and the refund of money.

PRAYER FOR RELIEF

Wherefore, Plaintiff requests this Court, pursuant to 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), and pursuant to its own equitable powers, to:

A. Permanently enjoin Defendants from violating the FTC Act and the TSR, as alleged herein;


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

C. 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,

WILLIAM BLUMENTHAL
General Counsel

Dated: May 10, 2005



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