

FILED
U.S. DISTRICT COURT
DISTRICT OF MARYLAND

2012 APR 11 AM 10:32
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
AT BALTIMORE

BY  DEPUTY

FEDERAL TRADE COMMISSION,
600 Pennsylvania Ave. NW
Washington, D.C., 20580,

Plaintiff,

v.

GREEN MILLIONAIRE, LLC, a limited liability
company,
1212 Flower Street 4th Floor
Los Angeles, CA 90015,

SYNDERO, INC., a corporation,
1212 Flower Street 4th Floor
Los Angeles, CA 90015,

SCOTT WALTZ, individually and as an officer
and director of Syndero, Inc.,
151 Barbaree Way
Tiburon, CA 94920, and

NIGEL WILLIAMS, individually,
1100 Glendon Ave., No. 1700,
Los Angeles, CA 90024

Defendants.

Case No. **L12CV1102**

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

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

- 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 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).

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) and (c), 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 Green Millionaire, LLC (“Green Millionaire”), is a Delaware limited liability company with its principal place of business at 99 Rhode Island Street, Floor 1, San Francisco, California 94103. Syndero holds a 50% interest in and runs the business and day-to-day operations of Green Millionaire. At times material to this Complaint, Green Millionaire marketed, advertised, offered for sale, and sold the Green Millionaire Book to consumers throughout the United States. Green Millionaire transacts or has transacted business in this district and throughout the United States.

7. Defendant Syndero, Inc. (“Syndero”), is a Delaware corporation with its principal place of business at 99 Rhode Island Street, Floor 1, San Francisco, California 94103. Syndero transacts or has transacted business in this district and throughout the United States. At times material to this

Complaint, Syndero marketed, advertised, offered for sale, and sold a book entitled “The Green Millionaire” (“Green Millionaire Book” or “Book”) to consumers throughout the United States.

8. Defendant Scott Waltz is the former CEO of Syndero and he participated in the business activities of Green Millionaire. At times material to this Complaint, acting with knowledge, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices set forth in this Complaint. Defendant Waltz, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

9. Defendant Nigel Williams is the author of the Green Millionaire Book and the on-air personality of Green Millionaire’s deceptive television and cable commercials. Nigel Williams provided consulting services to Green Millionaire and was paid a royalty for sales of the Green Millionaire Book. At times material to this Complaint, acting with knowledge, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices set forth in this Complaint. Defendant Williams, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

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’ BUSINESS ACTIVITIES

11. From September 2009 through at least November 2010, Defendants marketed, advertised, offered for sale, and sold the Green Millionaire Book.

12. Defendants marketed the Book to consumers throughout the United States through one and two minute television and cable commercials, as well as through the Internet.

13. In numerous instances, in their television and cable advertisements Defendants offered the Green Millionaire Book for “free.” Defendants induced consumers to purchase the Book with statements such as “Now it’s FREE,” “FREE!,” and “This free offer won’t last.” Moreover, the word “free” was displayed on the screen for all but five seconds of Defendants’ one or two minute commercials.

14. Defendants’ television and cable advertisements did not disclose or did not adequately disclose that consumers who ordered the Book would be enrolled in a negative option program subscribing and charging consumers for Defendants’ electronic magazine, the Green Millionaire Green Wealth Series (“Green Wealth e-Magazine”). A negative option program is one in which the seller interprets the consumer’s silence or failure to reject goods or services, or to cancel an agreement, often during a trial period, as acceptance of the offer.

15. In numerous instances, Defendants’ television and cable advertisements instructed consumers to go to their website to order the Book or to call a toll free number, which then instructed consumers to go to their website to order the Book.

16. When consumers accessed Defendants’ website, the initial page of the website contained statements such as “GET YOUR FREE BOOK TODAY!”

17. Defendants’ initial web page did not state that consumers must enroll in a negative option program to receive a free copy of the Book.

18. Defendants asked consumers to input their contact information such as name, address, and email, in a prominent box at the top of the initial web page and then to click on a “GET IT NOW” button.

19. Defendants did not disclose the material terms and conditions of the negative option program, such as cost and cancellation information, on the initial web page. The sole way for

consumers to obtain information about the negative option program on the initial web page was to click on a terms and conditions hyperlink located below the “GET IT NOW” button, and which could be found only by scrolling to the bottom of the web page.

20. After entering their contact information, consumers clicked on the “GET IT NOW” button. Consumers were then directed to a second web page.

21. On the second web page, Defendants asked consumers to input their credit or bank account information, ostensibly to pay for a nominal shipping and handling fee (*e.g.* \$1.95), and then click on another “GET IT NOW” button.

22. The only explanation of the material terms and conditions of the negative option program on the second web page was located at the bottom of the page and written in fine print block text placed below the “GET IT NOW” button, and below other visually prominent statements such as “Give yourself a \$21,000 RAISE by not showing up for work.”

23. Defendants enrolled consumers who purchased the Book in the negative option program at a recurring cost of \$29.95 for a two month membership to the Green Wealth e-Magazine or, more recently, \$89.95 for a one year membership, unless consumers cancelled during a trial period, typically of fourteen days.

24. In numerous instances, consumers did not know that they were being enrolled in a negative option program.

25. In numerous instances, to further induce consumers to purchase the Green Millionaire Book, Defendants’ advertisements, including their television and cable advertisements, stated:

“I’ll show you how to get free gas for life.”

“I’ll show you how to put solar panels on your roof for free.”

“I’ll show you how to make your electricity meter go backwards paying you.”

26. Defendants' Book did not show consumers how to get free gas for life, how to put solar panels on their roofs for free, or how to make their electricity meters go backwards paying them.

27. In numerous instances, to induce consumers to purchase the Green Millionaire Book, Defendants made statements through endorsements and testimonials in their advertisements, including Internet advertisements, such as:

"I don't pay for electricity."

"I don't have car payments, and I don't pay for fuel."

28. Defendants made statements such as those in Paragraph 27 through testimonials and endorsements without a reasonable factual basis that the endorsers were bona fide users of the Book or obtained the claimed benefits as a result of using the Book.

VIOLATIONS OF THE FTC ACT

29. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits "unfair or deceptive acts or practices in or affecting commerce."

30. Misrepresentations or deceptive omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act. 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).

COUNT I

Failure to Disclose Material Terms of Negative Option Program

31. In numerous instances, in connection with the marketing, advertising, offering for sale, or sale of the Green Millionaire Book, Defendants represented, expressly or by implication, that consumers could order a "free" Book and incur only a small cost (*e.g.*, \$1.95) for shipping and handling.

32. In truth and in fact, Defendants failed to disclose, or to disclose adequately, the material terms and conditions of the offer of a “free” Book, including:

- i. that consumers who ordered the free Book were enrolled in a negative option program;
- ii. the cost of the negative option program;
- iii. that consumers must cancel the negative option program before the end of a trial period to avoid additional charges;
- iv. how consumers must cancel the negative option program to avoid additional charges; and
- v. when consumers must cancel the negative option program to avoid additional charges.

33. Therefore, Defendants’ representations as set forth in Paragraph 31 of this Complaint were false or misleading and constituted 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

34. In numerous instances, Defendants debited or charged consumers’ bank or credit card accounts without consumers’ express informed consent.

35. Defendants’ actions caused or were likely to cause substantial injury to consumers that consumers could not reasonably avoid themselves and that was not outweighed by countervailing benefits to consumers or competition.

36. Therefore, Defendants' practices as described in Paragraph 34 of this Complaint constituted unfair acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. §§ 45(a) and 45(n).

**COUNT III
False Claims**

37. In numerous instances, in connection with the marketing, advertising, offering for sale, sale, or distribution of the Green Millionaire Book, Defendants represented, expressly or by implication, that the Book:

- i. shows consumers how to get free gas for life;
- ii. shows consumers how to make their electricity meter go backwards paying the consumer; and
- iii. shows consumers how to put solar panels on their roofs for free.

38. In truth and in fact, the Book does not show consumers how to attain any of the benefits set forth in Paragraph 37.

39. Therefore, the making of the representations set forth in Paragraph 37 constituted a deceptive act or practice, in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

**COUNT IV
Deceptive Testimonial**

40. In numerous instances, in connection with the marketing, advertising, offering for sale, or sale of the Green Millionaire Book, Defendants represented, directly or indirectly, expressly or by implication, that an endorser of the Green Millionaire Book was a bona fide user of the Book and claimed to derive benefits such as:

- i. not having to pay for electricity;

- ii. not having car payments; and
- iii. not having to pay for fuel.

41. In truth and in fact, the representations set forth in Paragraph 40 are false or misleading, or were not substantiated at the time the representations were made. Defendants did not possess and rely upon a reasonable basis to substantiate that: (1) the endorser was a bona fide user of the Book, or (2) the endorser attained the claimed benefits as a result of using the Book.

42. Therefore, the making of the representations set forth in Paragraph 40 constituted a deceptive act or practice, in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

CONSUMER INJURY

43. Consumers have suffered 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 continue to injure consumers, reap unjust enrichment, and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

44. 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 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.

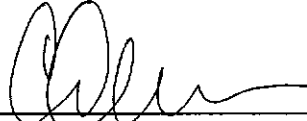
PRAYER FOR RELIEF

Wherefore, Plaintiff FTC, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and the Court's own equitable powers, requests that the Court:

- A. Enter a permanent injunction to prevent future violations of the FTC Act by Defendants;
- B. 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 or reformation of contracts, restitution, the 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,

WILLARD K. TOM
General Counsel



Carmen L. Christopher
Elsie B. Kappler
Federal Trade Commission
600 Pennsylvania Avenue, N.W.,
Suite M-8102B
Washington, D.C. 20580
Tel: (202) 326-3643 (Christopher)
Tel: (202) 326-2466 (Kappler)
Fax: (202) 326-2558
Email: cchristopher@ftc.gov; ekappler@ftc.gov

Dated: April 10, 2012

Attorneys for Plaintiff
FEDERAL TRADE COMMISSION