

Prepared Statement of
The Federal Trade Commission on

"The Mailing of Deceptive Materials Relating to Games of Chance"

Before the
Subcommittee on the Postal Service
of the Committee on Government Reform
United States House of Representatives

Washington, D.C.

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Mr. Chairman, I am Commissioner Orson Swindle of the Federal Trade Commission. The Commission is pleased to provide testimony today to assist the Committee in reviewing the necessity of amending Chapter 30 of Title 39 of the United States Code to address the mailing of deceptive materials relating to games of chance.⁽¹⁾

The Commission's statutory mandate is to encourage the efficient functioning of the marketplace by taking action against unfair or deceptive acts or practices and increasing consumer choice by promoting vigorous competition. A cornerstone of the Commission's mandate is Section 5 of the Federal Trade Commission Act, which prohibits unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce.⁽²⁾ The Commission has a long history of using its authority under Section 5 to challenge deceptive mail promotions. Our most recent efforts in this regard culminated in "Project Mailbox," a joint federal-state initiative focusing on the deceptive use of sweepstakes, prize promotions, premium awards, and other misleading marketing techniques in mail solicitations, unsolicited facsimiles, and unsolicited commercial e-mail. Through Project Mailbox, the Commission coordinated law enforcement efforts with 47 states as well as other federal and some local law enforcement agencies to bring more than 200 actions challenging such practices. The United States Postal Service contributed significantly to the Project Mailbox efforts. A copy of the Project Mailbox report and the press release are enclosed.

Law Enforcement

In order to support law enforcement efforts such as Project Mailbox, the Commission systematically collects and analyzes consumer complaint data. The Commission's Consumer Response Center ("CRC") currently receives nearly 7,000 consumer calls, letters, and e-mails per week -- up substantially since activation of the Commission's new toll-free consumer hotline (1-877-FTC-HELP), in June of this year. CRC staff adds this information to the FTC's database, which currently contains more than 423,000 consumer complaints and inquiries.

Commission staff use the database to spot trends, identify companies that should be targeted

for enforcement action, and locate relevant witnesses. To maximize the effectiveness of this database, the Commission sponsors and operates Consumer Sentinel, a secure Internet website through which law enforcement agencies throughout the United States and Canada can access the database. The database includes not only consumer complaints received directly by the CRC, but also those submitted by a large number of United States and Canadian law enforcement agencies, as well as complaints from private data contributors such as the National Fraud Information Center, Better Business Bureaus, and the American Association of Retired Persons ("AARP").⁽³⁾ Consumer Sentinel is a joint project of the FTC and the National Association of Attorneys General, in cooperation with Canadian partners Canshare and PhoneBusters. The FTC makes Consumer Sentinel available, at no charge, to over 200 U.S. and Canadian law enforcement agencies to use in developing their enforcement actions.

Consumer Education

Consumer and business education is another important component of the Commission's consumer protection efforts, and many of our consumer alerts and brochures aim to raise public awareness of the dangers of deceptive sweepstakes promotions. The Commission also distributes a number of publications designed to help legitimate businesses that use prize promotions comply with the law. These consumer and business publications are available in hard copy and from the Commission's website, www.FTC.gov. Several examples of these publications, including consumer advisory brochures issued in connection with Project Mailbox, have been provided to the Committee.

The Committee is reviewing the necessity of amending Chapter 30 of Title 39 of the United States Code, which addresses the ability of the U.S. Postal Service to curtail the mailing of certain materials. The Commission is aware of two bills currently pending before the Committee, H.R. 170 and H.R. 237, that address these issues. The goals of these bills appear consistent with those underlying Project Mailbox and the Commission's other enforcement work in this area. These bills, however, focus primarily upon the authority of the U.S. Postal Service and would not directly affect the Commission's continuing activity, under its existing authority, against the deceptive use of sweepstakes, prize promotions, premium awards, and other marketing techniques in direct mail and other media. The Commission believes that if enacted either of these bills could have a positive impact.

Both bills require that any sweepstakes-related solicitation (1) bear a notice on its envelope that clearly state that this is a game of chance or sweepstakes and that the recipient has not automatically won, and (2) have a similar notice on the first page of the solicitation itself, which includes a statement of the odds of winning and a statement that no purchase is required to win a prize or enhance one's chance of winning. Both bills specify the size of the required notices. In addition, H.R. 170 would require any sales promotion resembling a check to bear a conspicuous notice that it is *not* a check and has no cash value. Finally, H.R. 170 expressly would not preempt state law, but H.R. 237 does not address the issue of preemption.

The practices addressed by each of these bills are similar to those the Commission has

targeted in scores of enforcement actions brought against telemarketers and other direct marketers over the last decade in federal district courts under Sections 5 and 13(b) of the FTC Act. Moreover, they are similar to those addressed by the Commission's Telemarketing Sales Rule, 16 C.F.R. Part 310 ("TSR"), promulgated pursuant to the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. §§ 6101-6108. The TSR covers telemarketing, defined as "a plan, program, or campaign which is 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." Many of the covered sales plans, programs, or campaigns rely on mail solicitations to induce consumers to call a telephone number to learn more about the product or service offered. Many of them also include a sweepstakes or prize promotion. It is a violation of the TSR for telemarketers to fail to disclose all material information, including total cost, and any material restrictions or limitations on the use of the product or service being sold via telephone. Significantly, in any prize promotion, including sweepstakes, the TSR requires the telemarketer to disclose: 1) the odds of being able to receive the prize; 2) that no purchase or payment is required to win a prize or to participate in the prize promotion; 3) instructions on how to participate in the prize promotion without purchasing the product or making a payment; and 4) all material costs or conditions to receive or redeem a prize that is the subject of the prize promotion. 16 C.F.R. § 310.3(a)(1)(iv) and (v). Each of the bills being considered includes a requirement for some of these disclosures.

The Commission's approach, both in its case-by-case enforcement and in its regulatory activities as embodied by the TSR, ensures that consumers receive material information necessary to prevent them from making purchasing decisions on the basis of material information that is false or misleading. The bills now pending are consistent with that approach since they would require business to provide consumers with material information about the nature of sweepstakes-related promotions. Such legislation should lead to fewer deceptive sweepstakes mailings and a better informed public.

In conclusion, the Commission recognizes that the practice of mailing deceptive materials relating to games of chance is detrimental to American consumers. The Commission will continue to use the full range of investigative techniques, targeted law enforcement actions, and consumer and business education to attack this problem. We applaud the Subcommittee's interest in strengthening the tools available to the U.S. Postal Inspectors to combat these practices. I appreciate the opportunity to provide testimony today on the Commission's views, and would be pleased to answer any questions.

Endnotes:

1. The views expressed in this statement represent the views of the Commission. My responses to any questions you may have are my own.

2. 15 U.S.C. § 45(a). The Commission also has responsibilities under approximately 40 additional statutes, *e.g.*, the Fair Credit Reporting Act, 15 U.S.C. §§ 1681 *et seq.*, which establishes important privacy protections for consumers' sensitive financial information; the Truth in Lending Act, 15 U.S.C. §§ 1601 *et seq.*, which mandates disclosure of credit terms; and the Fair Credit Billing Act, 15 U.S.C. §§ 1666 *et seq.*, which provides for the correction of billing errors on credit accounts. The Commission also enforces approximately 30 rules governing specific industries and practices, *e.g.*, the Used Car Rule, 16 C.F.R. Part 455, which requires used

car dealers to disclose warranty terms via a window sticker; the Franchise Rule, 16 C.F.R. Part 436, which requires the provision of information to prospective franchisees; and the Telemarketing Sales Rule, 16 C.F.R. Part 310, which defines and prohibits deceptive and abusive telemarketing practices.

3. Consumer Sentinel is an invaluable tool in projects like Project Mailbox. Indeed, in connection with that effort, the American Association of Retired Persons ("AARP"), using criteria developed by the FTC to identify the earmarks of certain types of deception, reviewed thousands of direct mailings received by its members. Mailings that contained one or more of those indicators of deception were then entered into the Consumer Sentinel database.