

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION

FEDERAL TRADE COMMISSION
600 Pennsylvania Avenue, N.W.
Washington, DC 20580,

Plaintiff,

v.

PASSPORT IMPORTS, INC., a corporation,
also d/b/a PASSPORT TOYOTA
5050 Auth Way
Marlow Heights, Maryland 20746
Prince George's County,

PASSPORT MOTORCARS, INC., a corporation,
also d/b/a PASSPORT INFINITI OF ALEXANDRIA,
PASSPORT NISSAN OF ALEXANDRIA, and
PASSPORT NISSAN OF MARLOW HEIGHTS
150 S. Pickett Street
Alexandria, Virginia 22304,

AUTOS INTERNATIONAL, INC., a corporation,
also d/b/a PASSPORT INFINITI OF SUITLAND
4800 Branch Avenue
Suitland, Maryland 20746
Prince George's County,

EVERETT A. HELLMUTH, III, individually and as an
officer of PASSPORT IMPORTS, INC., PASSPORT
MOTORCARS, INC., and AUTOS INTERNATIONAL,
INC.
5050 Auth Way
Marlow Heights, Maryland 20746
Prince George's County,

JAY A. KLEIN, individually and as an officer of
PASSPORT IMPORTS, INC., PASSPORT
MOTORCARS, INC., and AUTOS INTERNATIONAL,
INC.
5050 Auth Way
Marlow Heights, Maryland 20746
Prince George's County,

TEMECULA EQUITY GROUP, LLC, a limited liability
company, also d/b/a OVERFLOWWORKS.COM
25220 Hancock Avenue, #220
Murrieta, California 92562, and

Civil Action No. _____

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

JEFFREY R. BUSH, individually and as an officer of
TEMECULA EQUITY GROUP, LLC.
25220 Hancock Avenue, #220
Murrieta, California 92562,

Defendants.

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 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 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 Passport Imports, Inc. (“Passport Imports”), also doing business as Passport Toyota, is a Virginia corporation with its principal place of business at 5050 Auth Way, Marlow Heights, Maryland 20746. Passport Imports transacts or has transacted business in this district.

7. Defendant Passport Motorcars, Inc. (“Passport Motorcars”), also doing business as Passport Infiniti of Alexandria, Passport Nissan of Alexandria, and Passport Nissan of Marlow Heights, is a Virginia corporation with its principal place of business at 150 S. Pickett Street, Alexandria, Virginia, 22304. Passport Motorcars transacts or has transacted business in this district.

8. Defendant Autos International, Inc. (“Autos International”), also doing business as Passport Infiniti of Suitland, is a Virginia corporation with its principal place of business at 4800 Branch Avenue, Suitland, Maryland, 20746. Autos International transacts or has transacted business in this district.

9. Defendant Everett A. Hellmuth, III is the founder, president, and a director of Defendants Passport Imports, Passport Motorcars, and Autos International (the “Passport Corporate Defendants”). At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of the Passport Corporate Defendants, including the acts and practices set forth in this Complaint. Defendant Hellmuth, in connection with the matters alleged herein, transacts or has transacted business in this district.

10. Defendant Jay A. Klein is the vice president of Defendants Passport Imports, Passport Motorcars, and Autos International. At all times material to this Complaint, acting

alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of the Passport Corporate Defendants, including the acts and practices set forth in this Complaint. Defendant Klein, in connection with the matters alleged herein, transacts or has transacted business in this district.

11. The Passport Corporate Defendants have operated as a common enterprise while engaging in the deceptive acts and practices alleged below. The Passport Corporate Defendants have conducted the business practices described below through an interrelated network of companies that have common ownership, officers, managers, employees, and business functions. Because the Passport Corporate Defendants have operated as a common enterprise, each of them is jointly and severally liable for the acts and practices alleged below. Defendants Hellmuth and Klein have formulated, directed, controlled, had the authority to control, or participated in the acts and practices of the Passport Corporate Defendants that constitute the common enterprise.

12. The Passport Corporate Defendants and Defendants Hellmuth and Klein (collectively, “the Passport Defendants”) have advertised, offered for sale, and sold motor vehicles and services related to motor vehicles to consumers.

13. Defendant Temecula Equity Group, LLC, also doing business as Overflowworks.com (“Overflow”), is a California limited liability company with its principal place of business at 25220 Hancock Avenue, #220, Murrieta, California 92562. Overflow transacts or has transacted business in this district and throughout the United States. Overflow provides direct mail marketing services, including designing marketing campaigns, for the automotive, mortgage, and solar industries.

14. Defendant Jeffrey R. Bush (“Bush”) is the managing member and CEO of Temecula Equity Group, LLC and holds himself out as the founder, president, and managing

partner of Overflowworks.com. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of Overflow set forth in this Complaint. Defendant Bush, in connection with the matters alleged herein, transacts or has transacted business in this district.

COMMERCE

15. 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

16. In January and February 2015, Defendants mailed “urgent” vehicle recall notices to nearly 7,000 Toyota owners. In June 2017, Defendants mailed virtually identical notices to thousands of additional consumers. Despite the notices’ claims about urgent recalls, Defendants sent the notices to consumers without limiting distribution to those whose vehicles were subject to open (i.e., unrepaired) safety recalls. Indeed, the vast majority of the consumers who were sent those notices did not have a vehicle subject to an open recall. After receiving the notices, many consumers tried to determine their vehicle’s actual recall status by, for example, calling the Passport Defendants’ dealerships. Many of those who called were told that they had to visit Defendants’ dealerships to learn about the status, and some visited Defendants’ dealerships and paid for repairs unconnected to a recall.

DEFENDANTS’ TOYOTA RECALL NOTICES

17. In or about November 2014, Defendant Bush of Overflow suggested to Defendant Klein of Passport that Overflow create vehicle recall notices for the Passport companies to send to vehicle owners. Bush sent Klein two examples of recall notice postcards that Overflow

previously had used for other dealerships. Each notice included the name, address, and logo of a specific car dealership. Bush offered to replace the dealer information on the sample notices with that of the Passport companies, and print and mail the notices.

18. Klein selected one of the notices, and Bush, on behalf of Overflow, replaced only the dealership's name and contact information to create a Passport Toyota recall notice. Both sides of that notice are reproduced below.



Passport Toyota
5050 Auth Way
Marlow Heights, MD 20746
(888) 770-3085
www.passporttoyota.com

VEHICLE INFO
YEAR: <VAR YEAR>
MAKE: <VAR MAKE>
MODEL: <VAR MODEL>

FIRST CLASS PERMIT
U.S. POSTAGE
PAID
1008811070
COLUMBIA, MD

VEHICLE RECALL NOTICE WARNING

Your listed vehicle may be under an important factory/safety recall:

THERE IS NO CHARGE TO YOU

**Call Today
(888) 770-3085**
PASSPORT TOYOTA
Important: Call Us for an Appointment &
Directions for your No-Charge Inspection
and/or Repair.

<variable full name>
<variable street address>
<variable city, ST zip>

19. As depicted above, these notices warn consumers about urgent recalls, with language such as "URGENT RECALL NOTICE" in large white, bold-faced, uppercase letters on

a red background on one side, and “VEHICLE RECALL NOTICE,” and “WARNING” in large red and black bold-faced, uppercase letters on a white background on the other.

20. These notices are similar to and have the same color scheme as the official recall notices that manufacturers are required by the U.S. Department of Transportation’s National Highway Traffic Safety Administration (“NHTSA”) to send to consumers. In 2014, NHTSA announced that all manufacturers must use a distinctive label for recall mailings to consumers, using white, uppercase letters against a red background. According to NHTSA, the label is intended to “help protect consumers from misleading sales and marketing materials that mimic, in their wording and presentation, legitimate safety recall alerts from manufacturers that can lead owners to purchase costly products and services that have no connection to a legitimate safety recall.”

21. Working on behalf of the Passport Defendants, Defendant Overflow obtained, from a list brokering company, a list of 6,920 consumers owning any model of Toyota from model years 2000-13 in zip codes close to Passport Toyota. Defendants did not act in response to a specific Toyota recall, and made no effort to limit the mailing list only to consumers whose vehicles were subject to open recalls. This was in spite of the fact that in August 2014, just months before Defendants sent their mailers, NHTSA announced the launch of its search tool that could identify whether a vehicle was subject to an open recall by entering the Vehicle Identification Number (“VIN”); NHTSA’s parent agency, the Department of Transportation, also required manufacturers like Toyota to have VIN search tools on their corporate websites.

22. Instead of using these tools, Defendants mailed recall notices to 6,920 Toyota owners in two mailings, in January and February 2015. Despite styling the mailer as an “URGENT RECALL NOTICE,” Defendants sent the notices to Toyota owners regardless of

whether their Toyotas were subject to open recalls, and in the vast majority of instances to consumers whose Toyotas were not subject to open recalls. Indeed, public data indicates that, at that time, only approximately 20% of automobiles on the road were subject to recalls, and that the percentage of Toyotas on the road subject to recalls was even lower.

23. The purpose of sending the mailers was to increase business, not to alert consumers with recalls. For example, in January 2015, the customer relations manager for Passport Toyota sent an email to the company's service coordinators noting that the Toyota recall notice "was targeted towards customers that don't do business with us," and that the service manager had directed the service coordinators to "just schedule these customers with an appointment. Do not worry about if there really is a recall or if we have parts." The Passport Toyota recall notice resulted in hundreds of phone calls to the Passport Defendants, with Defendant Bush noting to Defendant Klein, "I don't think I've ever seen [this level of] response to a non customer database in 20 years of doing car dealer direct mail (hundreds of millions of pieces)."

24. After receiving complaints about the recall mailing from consumers, Toyota, and other dealers, Defendant Klein admitted that he "got a ton of heat from Toyota" and "Toyota and the local dealers wanted to crucify me." But despite the "heat," Klein noted to other Passport managers that, "as you see we had 410 unique callers" and asked them to try to figure out how much revenue the mailers had generated.

DEFENDANTS' SUBSEQUENT RECALL NOTICES

25. The Defendants were aware of complaints about the Toyota recall notice, but continued sending virtually identical deceptive recall notices to consumers without first confirming that the recipients had vehicles with open recalls. For example, in June 2017, the

Passport Defendants received a bulletin from Nissan North America about a “voluntary service campaign”—distinct from a government-mandated safety recall—to reprogram air bag control units in three models of Nissan vehicles from certain production ranges spanning over ten years. Nissan stated that it would notify owners of affected vehicles and ask them to bring their vehicles to an authorized Nissan dealer. The bulletin instructed dealers to verify whether vehicles were affected by the Voluntary Service Campaign, and to inform consumers who visited the service department if their vehicle was affected by checking the manufacturer’s database. Instead, Defendant Klein noted in an email that included Defendant Bush that “[t]his is a whole lot of vehicles we should have Overflow run the counts in both Nissan [dealerships’ primary market areas] and do a Nissan recall postcard to these owners.”

26. Working with the Passport Defendants, Overflow created recall notices for Passport Nissan of Alexandria and Passport Nissan of Marlow Heights that were identical to the Passport Toyota recall notices, other than the name and address of the dealerships. In June 2017, Defendants mailed 8,121 Passport Nissan of Alexandria notices and 6,370 Passport Nissan of Marlow Heights notices to consumers who lived near those dealerships and had Nissan vehicles matching the models and years included in the voluntary service campaign—without first checking the manufacturer’s database to see whether each vehicle was subject to the voluntary service campaign or any open recall.

27. According to Nissan North America, the majority of vehicles in the model years listed in the voluntary service campaign did not even have the part that needed to be repaired. Thus, the majority of consumers who received the “urgent recall notice” did not have a vehicle subject to Nissan’s voluntary service campaign, let alone subject to an open recall.

28. In a July 10, 2017 email to the Passport Defendants’ call center employees, the

director of customer care for the Passport Auto Group acknowledged, “THESE MAILERS ARE NOT SPECIFIC RECALLS. THESE MAILERS WERE DESIGNED TO CULTIVATE BUSINESS AND GET THE PHONE TO RING. The idea is to stimulate an inquiry and, in the process, provide us with the opportunity to ‘discover’ an open recall on their vehicle” (emphasis in original). Similarly, Defendant Klein has acknowledged in emails that the recall mailers “really get the phone ringing” and “drive some traffic” to the dealership.

29. The Passport Defendants’ call center received 352 calls from consumers who had been sent the Passport Nissan of Alexandria notice and 265 calls from consumers who had been sent the Passport Nissan of Marlow Heights notice.

30. At least one consumer complained to Nissan North America after receiving the Passport Nissan of Marlow Heights notice. When the consumer, who was not a regular Passport customer, called to ask which recall his vehicle was subject to, the Passport representative said that information was not available over the phone and that the consumer would have to bring his vehicle to the service department to find out. The consumer subsequently called his regular dealership and learned his vehicle was not subject to any open recall. When the consumer called Passport back to complain about receiving the mailer when his vehicle was not subject to a recall, he was again diverted to the service department.

31. Defendants knew that they could have confirmed which vehicles were actually subject to open recalls. For example, a manufacturer’s representative confirmed in an email to Defendant Hellmuth that Passport could identify which consumers had vehicles with open recalls by searching by VIN in the corporate database. And before Defendants sent yet another recall mailing in June 2017 to consumers without confirming their vehicles had open recalls, Defendant Hellmuth stated to staff in an email, “I suggest we do a mailer to these owners and get Them in. I

Would not tell [the manufacturer] or our staff that we Are mailing to the customers. Let's get this done for a Wide part of D.C.”

VIOLATIONS OF THE FTC ACT

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

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

Count I

34. Through the means described in Paragraphs 18, 19, 22, 25, and 26 of this Complaint, Defendants have represented, directly or indirectly, expressly or by implication, that the vehicles of the consumers who received Defendants' recall notices were subject to an open safety recall.

35. In truth and in fact, in numerous instances, the vehicles of the consumers who received Defendants' recall notices were not subject to open safety recalls.

36. Therefore, the making of the representations as set forth in Paragraph 34 of this Complaint constitutes 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

37. 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 continue to injure consumers, reap unjust enrichment, and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

38. 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. Award Plaintiff such preliminary injunctive 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;
- 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 or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies; and
- D. 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,

Alden F. Abbott
General Counsel

Dated: October 10, 2018



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