

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

FILED
JUL 15 2009 10:45
U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO, FLORIDA

UNITED STATES OF AMERICA,

Plaintiff,

v.

ALL IN ONE VACATION CLUB, L.L.C.,
d/b/a All In One Vacations and
f/d/b/a Vacation Station, Inc., a
Florida limited liability company,

ACCUMEN MANAGEMENT
SERVICES, INC., a Florida
corporation,

LARRY COLTELLI, individually and as
an officer or director of All In One
Vacation Club, L.L.C. and
Accumen Management Services,
Inc., and

STEVE SCHLOSSBERG, individually and
as an officer or director of All In
One Vacation Club, L.L.C. and
Accumen Management Services,
Inc.

Defendants.

Case No. 6:09-CV-103-ORL-31-DAB

**COMPLAINT FOR CIVIL
PENALTIES, PERMANENT
INJUNCTION, AND OTHER RELIEF**

Plaintiff, the United States of America, acting upon notification and authorization to the Attorney General by the Federal Trade Commission ("FTC" or "Commission"), pursuant to Section 16(a)(1) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 56(a)(1), for its complaint alleges:

1. Plaintiff brings this action under Sections 5(a), 5(m)(1)(A), 13(b), and 16(a) of the FTC Act, 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b), and 56(a), and Section 6 of the Telemarketing and Consumer Fraud and Abuse Prevention Act (the “Telemarketing Act”), 15 U.S.C. § 6105, to obtain monetary civil penalties, a permanent injunction, and other equitable relief for defendants’ violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the FTC’s Telemarketing Sales Rule (the “TSR” or “Rule”), 16 C.F.R. Part 310, as amended by 68 Fed. Reg. 4580, 4669 (January 29, 2003).

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355, and 15 U.S.C. §§ 45(m)(1)(A), 53(b), and 56(a). This action arises under 15 U.S.C. § 45(a).
3. Venue is proper in this District under 28 U.S.C. §§ 1391(b)-(c) and 1395(a), and 15 U.S.C. § 53(b).

DEFENDANTS

4. Defendant All In One Vacation Club, L.L.C. (“All In One”), d/b/a All In One Vacations and f/d/b/a Vacation Station, Inc., is a Florida limited liability company with its principal place of business at 100 East Granada Blvd., Ormond Beach, Florida 32176. Defendant All In One is a telemarketer of timeshares and vacations at timeshare resorts for its parent corporation, Accumen Management Services, Inc. All In One transacts or has transacted business in this District.

5. Defendant Accumen Management Services, Inc. (“Accumen”), is a Florida corporation with its principal place of business at 100 East Granada Blvd., Ormond Beach, Florida 32176. Defendant Accumen is a seller of goods or services, including timeshares and vacations at timeshare resorts, to consumers that has caused All In One, its telemarketing subsidiary, to call consumers to induce the purchase of goods or services from Accumen. Accumen transacts or has transacted business in this District.
6. Defendant Larry Coltelli is an officer, director, or manager of Accumen and All In One. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, or participated in the acts and practices of Accumen and All In One, including the acts and practices set forth in this Complaint. He resides or has transacted business in the Middle District of Florida.
7. Defendant Steve Schlossberg is an officer, director, or manager of Accumen and All In One. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, or participated in the acts and practices of Accumen and All In One, including the acts and practices set forth in this Complaint. He transacts or has transacted business in the Middle District of Florida.

THE TELEMARKETING SALES RULE
AND THE NATIONAL DO NOT CALL REGISTRY

8. 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, in 1994. On August 16, 1995, the FTC adopted the Telemarketing

Sales Rule (the “Original TSR”), 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 (“SBP”) and the final amended TSR (the “Amended TSR”). 68 Fed. Reg. 4580, 4669.

9. Among other things, the Amended TSR 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.
10. 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.
11. 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.
12. Since October 17, 2003, sellers and telemarketers 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).
13. A seller or telemarketer may call a consumer’s number on the Registry if it can prove, as a defense, that seller has an “established business relationship” with the

consumer, and so long as the consumer has not subsequently made an entity-specific do-not-call request stating that he or she does not wish to receive calls made by or on behalf of the seller. 16 C.F.R. § 310.4(b)(1)(iii)(B)(ii). An “established business relationship” means, among other things, “a consumer’s inquiry or application regarding a product or service offered by the seller, within the three months (3) immediately preceding the date of a telemarketing call.” 16 C.F.R. § 310.2(n)(2).

14. The Commission has warned that the “established business relationship” exemption is to be narrowly crafted and should be consistent with “consumer expectations.” 68 Fed. Reg. 4580, 4591-94. In particular, the key issue in showing an established business relationship based on a consumer inquiry is whether, under all the circumstances, the consumer has taken an action such as would “reasonably lead to an expectation of a prompt follow-up telephone contact.” *Id.* at 4593.
15. A seller or telemarketer may also call a consumer’s number on the Registry if it can prove, as a defense, that the seller has obtained an “express agreement, in writing” of the consumer to place calls to that consumer’s number, and so long as the consumer has not subsequently made an entity-specific do-not-call request stating that he or she does not wish to receive calls made by or on behalf of the seller. 16 C.F.R. § 310.4(b)(1)(iii)(B)(i); 68 Fed. Reg. 4580, 4634. Such written agreement shall clearly evidence such consumer’s authorization that calls made by or on behalf of a specific party may be placed to that consumer, and shall include the telephone number to which the calls may be placed and the signature of that consumer.

16. The Commission has explicitly stated that such written agreement must be “clear and conspicuous,” and that it must include the consumer’s signature demonstrating the consumer’s assent to be called by or on behalf of the particular seller for telemarketing purposes. 68 Fed. Reg. 4580, 4634. The Commission staff also has expressly stated that attempting to obtain a consumer’s “express agreement” through subterfuge, such as by use of a prize promotion or sweepstakes entry form, does not constitute an affirmative defense to the Rule’s do-not-call requirements. “The Written Permission to Call Exemption,” *Complying with the Telemarketing Sales Rule* at p. 44, at <http://www.ftc.gov/bcp/edu/pubs/business/marketing/bus27.pdf>.
17. Since October 1, 2003, sellers and telemarketers have been prohibited from abandoning any outbound telephone call by not connecting the call to a representative within two (2) seconds of the consumer’s completed greeting. 16 C.F.R. § 310.4(b)(1)(iv).
18. 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).

DEFENDANTS’ BUSINESS ACTIVITIES

19. Defendants are “seller[s]” or “telemarketer[s]” engaged in “telemarketing,” as defined by the Amended TSR, 16 C.F.R. § 310.2.

20. All In One is a telemarketer that initiates, or causes others to initiate on its behalf, outbound telephone calls to consumers in the United States to induce the purchase of timeshares and vacations at timeshare resorts sold by its parent, Accumen.
21. Accumen is a seller of timeshares and vacations at timeshare resorts to consumers. Accumen has caused All In One, as its telemarketing subsidiary, to initiate outbound calls to consumers in the United States to induce the purchase of goods or services from Accumen, including timeshares and vacations at timeshare resorts.
22. Defendants have engaged in telemarketing by a plan, program, or campaign 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.
23. On or after October 17, 2003, defendants have called consumers' telephone numbers that are on the National Do Not Call Registry.
24. On or after October 17, 2003, defendants have offered prize promotions to consumers who were interested in winning vacation packages and other prizes. A consumer who wants to participate in one of defendants' sweepstakes does so by filling out an entry form made available by defendants at kiosks at various retail establishments, including shopping malls. The sweepstakes entry form requires a consumer to provide his or her name, telephone number, home address, email address and signature. The form requires that a consumer fill out all this information before the consumer may enter the sweepstakes. Attachment 1 is a copy of a typical card used by defendants. Defendants then call these consumers, many of whose numbers are on

the National Do Not Call Registry, and try to convince them to purchase a timeshare or other vacation offering.

25. The completed sweepstakes entry form referred to in paragraph 24 does not constitute a “consumer’s inquiry or application regarding a product or service offered by the seller” under the Do Not Call provisions. The form would not lead a reasonable consumer to expect that, by completing it, the consumer would receive a prompt follow-up call by the seller about its timeshares and other vacation offerings. Defendants, thus, do not have an established business relationship for calls to numerous consumers’ numbers on the National Do Not Call Registry.
26. The completed sweepstakes entry form referred to in paragraph 24 also does not constitute “express agreement” under the Do Not Call provisions. The form does not advise consumers clearly and conspicuously that, by putting down his or her phone number on the entry form, the consumer is giving express authorization to be contacted by defendants for telemarketing purposes. Accordingly, the completed sweepstakes entry form is also not an express written agreement that clearly evidences the consumer’s authorization for calls by or on behalf of the seller. Defendants, thus, do not have an express written agreement for calls to numerous consumers’ numbers on the National Do Not Call Registry.
27. On or after October 1, 2003, defendants have abandoned outbound telephone calls to consumers by failing to connect the call to a representative within two (2) seconds of the consumer’s completed greeting.

28. At all times relevant to this complaint, defendants have maintained a substantial course of trade or business in the offering for sale and sale of goods or services via the telephone, in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

VIOLATIONS OF THE TELEMARKETING SALES RULE

Count I

Violating the National Do Not Call Registry

29. In numerous instances, in connection with telemarketing, defendants 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 TSR, 16 C.F.R. § 310.4(b)(1)(iii)(B).

Count II

Abandoning Calls

30. In numerous instances, in connection with telemarketing, defendants have abandoned, or caused others to abandon, an outbound telephone call by failing to connect the call to a sales representative within two (2) seconds of the completed greeting of the person answering the call, in violation of the TSR, 16 C.F.R. § 310.4(b)(1)(iv).

CONSUMER INJURY

31. Consumers in the United States have suffered and will suffer injury as a result of defendants’ violations of the 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

32. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and other ancillary relief to prevent and remedy any violation of any provision of law enforced by the FTC.
33. Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A), as modified by Section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended, and as implemented by 16 C.F.R. § 1.98(d) (1997), authorizes this Court to award monetary civil penalties of not more than \$11,000 for each violation of the TSR. Defendants' violations of the TSR were committed with the knowledge required by Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A).
34. This Court, in the exercise of its equitable jurisdiction, may award ancillary relief to remedy injury caused by defendants' violations of the Rule and the FTC Act.

PRAYER FOR RELIEF

WHEREFORE, plaintiff, as authorized by Sections 5(a), 5(m)(1)(A), and 13(b) of the FTC Act, 15 U.S.C. §§ 45(a), 45(m)(1)(A), and 53(b), and the Court's own equitable powers, requests that the Court:

- A. Enter judgment against defendants and in favor of plaintiff for each violation alleged in this complaint;
- B. Award plaintiff monetary civil penalties from each defendant for every violation of the TSR;

- C. Enter a permanent injunction to prevent future violations of the TSR and the FTC Act by defendants; and
- D. Award plaintiff such other and additional relief as the Court may determine to be just and proper.

Dated: 1-14-09

Respectfully submitted,

OF COUNSEL:

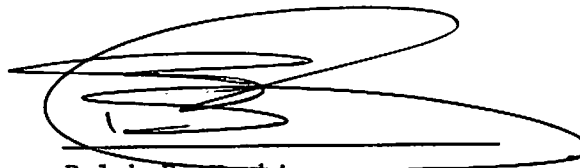
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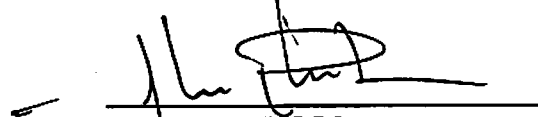
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A handwritten signature in black ink, appearing to read "Alan J. Phelps", is written over a horizontal line. The signature is stylized and cursive.

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ATTACHMENT 1

Fill Out and Drop In the Box to Register to Receive

A Bahamas Cruise Getaway

Must be 25 years of age or older. One entry per household. ****TO QUALIFY - COMPLETE IN FULL****

Telephone: Home (____) _____ Work (____) _____

Name _____ E-mail _____

Address _____

City _____ State _____ Zip _____

Signature X _____

FRONT

MINI SURVEY MUST BE COMPLETED - ONE ENTRY PER HOUSEHOLD

1. I am currently:
Single Married Co-Hab
2. My age group/Spouse age group is:
Under 25 26-49 50-69 70+
3. Combined Household income:
Under 35K 35-39K 40-49K 50K+
4. The credit card I use when I vacation is:
Visa MC Amex Disc None
5. I speak and understand English:
Yes No

This advertising material is used for the purpose of soliciting sales of a vacation ownership plan.

Thank you for your participation and Good Luck!

Enjoy Three Nights in the Bahamas Plus a Round Trip Cruise for Two!

The "Getaway Holiday" is designed to preview our Grand Seas Resort.

Although no one is precluded from viewing our Resort, only employed individuals over 25 years of age that meet our marketing demographics will be offered this fantastic vacation. **Departure taxes, port charges, reservation and processing fees per person are to be paid by participant at the time of booking travel. All other expenses associated with travel, gratuity, taxes, service charges, phone, food, transportation, etc. are the responsibility of participant. If you qualify, you will be contacted by telephone, email or text messaging and given the opportunity to take advantage of our getaway offer. This offer is administered by All In One Vacations, 100 East Granada Blvd., Ormond Beach, FL 32176. Void where prohibited by law. You will be required to take a 90 minute sales presentation to preview the resort and you are under no obligation to purchase anything.

BACK

By filling out this entrance form you are consenting to be removed from any no call registry for the specific purpose of allowing the sponsor to contact you with a discounted travel opportunity that is separate from the sweepstakes offered above.

THIS ADVERTISING MATERIAL IS BEING USED FOR THE PURPOSE OF SOLICITING SALES OF A VACATION OWNERSHIP PLAN.