

PLAINTIFF

4. Plaintiff, the Federal Trade Commission, is an independent agency of the United States Government created by the FTC Act, 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. In addition, the FTC enforces the EFTA, and violations of the EFTA are violations of the FTC Act, 15 U.S.C. § 1693o(c). The FTC may initiate federal district court proceedings, through its attorneys, to enjoin violations of the FTC Act and the EFTA and to secure such other equitable relief, including rescission of contracts and restitution, and disgorgement of ill-gotten gains, as may be appropriate in each case, 15 U.S.C. §§ 53(b).

DEFENDANTS

5. Defendant HispaNexo, Inc. (“HispaNexo”) is a Virginia corporation, with its principal place of business in Falls Church, Virginia. HispaNexo transacts or has transacted business in this district.

6. Defendant Rafael Vasquez (“Vasquez”) is the President and a director of defendant HispaNexo. Individually or in concert with others, he directs, controls, formulates and/or participates in the acts and practices set forth herein. Vasquez transacts or has transacted business in this district.

7. Defendant Ernesto Ramirez (“Ramirez”) has been the Vice-President and a director of defendant HispaNexo. Individually or in concert with others, he has directed, controlled, formulated and/or participated in the acts and practices set forth herein. Ramirez transacts or has transacted business in this district.

COMMERCE

8. At all times relevant to this complaint, Defendants’ course of trade is in or affecting commerce within the meaning of Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS' COURSE OF CONDUCT

9. Since at least 2003, Defendants have promoted, marketed, offered to sell and sold principally to Spanish-speaking consumers an at-home instructional course entitled "Triunfando en los negocios de construccion, jardeneria y limpieza," ("Succeeding in the Construction, Gardening and Cleaning Industries")(the "Course"). Defendants advertise the Course through Spanish-language radio advertisements and television advertisements that air in various markets across the United States, soliciting inbound telemarketing calls, and through the Internet. Defendants have sold at least \$1.3 million worth of the Courses since January 2003.

10. A typical radio advertisement states, in pertinent part:

For the first time in the United States there is a course that is unique in its type, that is in Spanish, and that guides you step by step to work on your own and earn thousands of dollars. . . . **If you call right now you will be able to try out this incredible course for only nine dollars of shipping and handling, review it for several weeks and, if you don't like it, you return it and pay nothing more.** Don't miss this opportunity and dial right now, 1-800-511-6091. (emphasis added)

The television advertisements convey a similar marketing pitch.

11. In many, but not all, instances, consumers are not told, or not told in a manner that they are likely to notice and understand, that the offer has certain negative option features, including that Defendants will automatically charge the consumers' credit cards or bank accounts for three additional payments of \$86.99 at the conclusion of the trial period unless the consumers return the Course.

12. The telemarketers assure consumers that it costs only \$9 to review the Course materials and that, if they do not like it, they can simply return it within 15 days and have no further obligations. In most instances, consumers are not told, in a manner that they are likely to notice and understand, the steps that they must take in order to "return" the Course to Defendants. Consumers are not told that, in order to return the Course, they must (1) send a written request by facsimile to a specified number to obtain a RMA (Return Merchant Authorization) number from the Defendants; (2) wait to receive the RMA number and specific

shipping instructions in the mail; and then (3) return the Course to Defendants in a package bearing the RMA number within 30 days.

13. Defendants represent that they accept credit cards, debit cards, checks and money orders.

14. Defendants also market the Course through a web site located at www.hispanexo.com. The web site prominently features the following statement in large font against an eye-catching, graphical background:

SPECIAL OFFER – Try the course for only \$9 for shipping and handling*.

If consumers follow the asterisk to the bottom of the page, they are taken to a link that, in smaller font, states the following: *Click to see how this offer works. If consumers click on that link, they are taken to a completely separate web page that contains the following:

How the \$9 offer works:

You will receive the complete course *Succeeding in the Construction, Gardening and Cleaning Industries*, including a computer course and a credit course for only \$9. Once you have received it, you have 15 days to decide whether you will keep the course or whether you will return it. To return it, follow the return instructions (www.hispanexo.com/returns.htm). The \$9 is not refundable. If you decide to keep the course, you will pay the regular price of \$86.99 in 3 installments. The first payment will be due the day immediately after the end of this warranty, the second 20 days later and the third 35 days later. If you wish to receive an invoice for these payments, you may call 1-800-838-7220 with your order number and present a request.

15. Typically, approximately three weeks after paying the \$9 charge, consumers receive a box from Defendants containing the Course. Enclosed in the box shipped to consumers containing the Course is a sheet entitled “Terms and Conditions.” In small print at the end of the lengthy “Terms and Conditions” is the following information:

To return a product, you must obtain an RMA (Return Merchandise Authorization) from the returns department of Hispanexo. Once the RMA request has been received, the returns department will send you a mail notification with your RMA number and the return instructions. The notification will be received in 3-4 days. The RMA number will be valid for a period of 30 days. Never send the package without first obtaining the RMA number. Should you do so, the package will be considered lost. To request an RMA you will have to fill out an RMA-OI application and send it by fax to 703-575-9448. You may return any unopened product or in its original packaging within a period of 15 days from the date of receipt for a 100% refund of the value of the product, minus shipping and

handling costs (other restrictions may apply). Hispanexo, Inc. will accept all return costs if the return is caused by an error on the part of the company (ex: shipping of the wrong merchandise). In any other case, Hispanexo Inc., will not accept return charges.

16. Approximately 15 days after consumers receive the Course, a charge appears on their credit card or debit card for \$86.99. In those instances where consumers use a debit card for the initial \$9 charge, Defendants do not obtain written authorization from such consumers for future recurring charges from the consumers' bank accounts.

17. In some instances, when consumers attempt to return the Course to Defendants, even after complying with Defendants' laborious return requirements, Defendants have not accepted the returns. Instead, these consumers find that their credit cards are charged for three installments of \$86.99, for a total payment ($\$9 + \$86.99 + \$86.99 + 86.99$) of \$269.97.

18. In numerous instances, consumers who telephone Defendants to complain about the charges are often put on hold interminably, disconnected, or otherwise ignored by Defendants' representatives. In some instances, consumers have complained that Defendants' representatives argue with them, or suggest they are misrepresenting the facts.

THE FEDERAL TRADE COMMISSION ACT

19. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), provides that "unfair or deceptive acts or practices in or affecting commerce are hereby declared unlawful."

VIOLATIONS OF SECTION 5(a) OF THE FTC ACT

COUNT I

DECEPTIVE FAILURE TO DISCLOSE TOTAL COST

20. In numerous instances, in connection with the advertising, promotion, marketing, offering for sale, sale or distribution of the Course, Defendants have represented, expressly or by implication, that consumers who agree to their offer will be able to try the Course for only \$9 for shipping and handling.

21. Defendants have failed to disclose or to disclose adequately to consumers before payment the material negative option features of the trial offer, including but not limited to, that

fact that defendants automatically will charge consumers' credit cards for three payments of \$89.99 if they fail to return the Course within 15 days of its receipt.

22. As a result of the representations set forth in Paragraph 20, Defendants' failure to disclose or disclose adequately the material information set forth in Paragraph 21 is a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT II

FALSE REPRESENTATION THAT CONSUMERS CAN EASILY RETURN THE COURSE AND OBTAIN REFUNDS

23. In numerous instances, in connection with the advertising, promotion, marketing, offering for sale, sale or distribution of the Course, Defendants have represented, expressly or by implication, that consumers who agree to review the Course materials can easily return them if they do not wish to keep them, with no further obligation.

24. In truth and in fact, in numerous instances, consumers who have accepted Defendants' offer to review the Course materials and decide not to keep them have not been able to easily return them without further obligation.

25. Therefore, the representations set forth in Paragraph 23 are false and misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT III

DECEPTIVE FAILURE TO DISCLOSE TERMS OF RETURN POLICY

26. In numerous instances, in connection with the advertising, promotion, marketing, offering for sale, sale or distribution of the Course, Defendants have represented, expressly or by implication, that consumers can review the Course materials for only \$9 for shipping and handling and that they could obtain refunds if they decided not to keep them and returned them to Defendants within 15 days of their receipt.

27. Defendants have failed to disclose or to disclose adequately to consumers before they agree to the offer that, to obtain a refund, consumers must (1) send a written request by

facsimile to a specified number to obtain a RMA (Return Merchant Authorization) number from the Defendants; (2) wait to receive the RMA number and specific shipping instructions in the mail; and then (3) return the Course to Defendants in a package bearing the RMA number within 30 days.

28. As a result of the representations set forth in Paragraph 26, Defendants' failure to disclose or disclose adequately the material information set forth in Paragraph 27 is a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT IV

UNFAIR SUBMISSION OF CHARGES

29. In numerous instances, in connection with the advertising, promotion, marketing, offering for sale, sale or distribution of the Course, Defendants have caused three additional charges of \$86.99 each, for a total of \$260.97, to be submitted for payment for such Course to the credit and debit cards of those consumers who returned the Course or were not adequately informed of the negative option features or the terms and conditions of the refund policy, and who therefore did not provide express informed consent for the additional charges.

30. Defendants' practice of causing charges to be submitted for payment for the Course without the consumer's express informed consent causes or is likely to cause substantial injury to consumers that is not reasonably avoidable by consumers themselves and is not outweighed by countervailing benefits to consumers or to competition.

31. Therefore, Defendants' practice, as alleged in Paragraph 29, is unfair in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

THE ELECTRONIC FUND TRANSFER ACT AND REGULATION E

32. Section 907(a) of the EFTA, 15 U.S.C. § 1693e(a), provides that a "preauthorized electronic fund transfer from a consumer's account may be authorized by the consumer only in writing, and a copy of such authorization shall be provided to the consumer when made."

According to Section 903(9) of the EFTA, 15 USC § 1693a(9), the term "preauthorized electronic fund transfer" means an electronic fund transfer authorized in advance to recur at substantially regular intervals."

33. Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b), provides that "Preauthorized electronic fund transfers from a consumer's account may be authorized only by a writing signed or similarly authenticated by the consumer. The person that obtains the authorization shall provide a copy to the consumer."

34. Section 205.10(b) of the Federal Reserve Board's Official Staff Commentary to Regulation E, 12 C.F.R. § 205.10(b), Supp. I, provides that:

The requirement that preauthorized EFTs be authorized by the consumer "only by a writing" cannot be met by a payee's signing a written authorization on the consumer's behalf with only an oral authorization from the consumer. A tape recording of a telephone conversation with a consumer who agrees to preauthorized debits also does not constitute written authorization for the purposes of this provision.

COUNT V

VIOLATIONS OF THE ELECTRONIC FUND TRANSFER ACT

35. In numerous instances, Defendants have debited consumers' bank accounts on a recurring basis without obtaining consumers' written authorization for preauthorized electronic fund transfers from the accounts, thereby violating Section 907(a) of the EFTA, 15 U.S.C. § 1693e(a); Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b); and Section 205.10(b) of the Federal Reserve Board's Official Staff Commentary to Regulation E, 12 C.F.R. § 205.10(b), Supp. I.

36. Pursuant to the EFTA, 15 U.S.C. § 1693o(c), every violation of the EFTA and Regulation E constitutes a violation of the FTC Act.

37. By engaging in violations of the EFTA and Regulation E as alleged in Paragraph 35 above, Defendants have engaged in violations of the FTC Act.

CONSUMER INJURY

38. Consumers throughout the United States have suffered, and continue to suffer, substantial monetary loss as a result of Defendants' unlawful acts and practices. In addition, Defendants have been unjustly enriched as a result of their unlawful acts and practices. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public.

THIS COURT'S POWER TO GRANT RELIEF

39. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant a permanent injunction, rescission of contracts and restitution, disgorgement of ill-gotten gains, and other equitable relief to prevent and remedy any violations of any provision of law enforced by the FTC.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that this Court, as authorized by Section 13(b) of the FTC Act, 15 U.S.C. §§ 53(b), and pursuant to its own equitable powers:

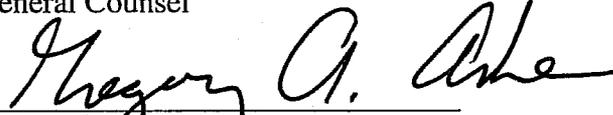
1. Permanently enjoin and restrain Defendants from violating the FTC Act, the EFTA, Regulation E, and the Federal Reserve Board's Official Staff Commentary to Regulation E;
2. Award such equitable relief as the Court finds necessary to redress injury to consumers resulting from the Defendants' violations of Section 5(a) of the FTC Act, the EFTA, Regulation E, and the Federal Reserve Board's Official Staff Commentary to Regulation E, including but not limited to, rescission of contracts, restitution, and the disgorgement of ill-gotten gains by the Defendants; and

3. Award the Plaintiff the costs of bringing this action and such other equitable relief as the Court may determine to be just and proper.

Dated: _____

Respectfully submitted,

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