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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

Case No. **08-21433-CIV-JORDAN/MCALILEY**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

ALTERNATEL, INC.; G.F.G. ENTERPRISES LLC,  
also d/b/a MYSTIC PREPAID; VOICE PREPAID,  
INC.; VOICE DISTRIBUTORS, INC.; TELECOM  
EXPRESS, INC.; LUCAS FRIEDLANDER; MOSES  
GREENFIELD; NICKOLAS GULAKOS; and  
FRANK WENDORFF,

Defendants.

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**PLAINTIFF FEDERAL TRADE COMMISSION'S MEMORANDUM OF LAW  
IN SUPPORT OF EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER  
AND PRELIMINARY INJUNCTION WITH OTHER EQUITABLE RELIEF**

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## INTRODUCTION<sup>1</sup>

Plaintiff Federal Trade Commission (“FTC”) moves this Court for a temporary restraining order (“TRO”) and preliminary injunction with other equitable relief to put an immediate end to deceptive business practices that have defrauded consumers of millions of dollars. Individual Defendants Nickolas Gulakos, Moses Greenfield, Lucas Friedlander, and Frank Wendorff together operate a common enterprise that distributes prepaid calling cards through corporate defendants Alternatel, Inc., G.F.G. Enterprises LLC, also d/b/a Mystic Prepaid, Voice Prepaid, Inc., Voice Distributors, Inc., and Telecom Express, Inc. Defendants market their cards to recent immigrants in Florida, New Jersey, Pennsylvania, Massachusetts, New Hampshire, and Rhode Island, who rely on such cards to call friends and family outside the United States. In marketing their cards, Defendants represent that consumers will receive a specific number of calling minutes to particular international destinations. These representations are false: consumers who purchase Defendants’ cards typically receive far fewer minutes than Defendants advertise. In addition, Defendants fail to disclose, or to disclose adequately, the fees associated with their cards. Defendants’ conduct violates Section 5 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce.

Defendants have continued their deceptive conduct despite an investigation into the marketing practices of one of the defendants — Alternatel — initiated by the Florida Attorney General in July 2007;<sup>2</sup> a private lawsuit alleging deceptive marketing practices by three of the

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<sup>1</sup>The FTC submits three volumes of exhibits in support of this motion, which include declarations and attachments thereto. Exhibits are cited with the abbreviation “FTC Ex.” followed by the exhibit number. Declarations are then cited by paragraph number, while attachments to declarations are cited by letter and page number.

<sup>2</sup>FTC Ex. 1, ¶ 44, Att. KK, p. 638; *see also* Press Release, “McCollum Issues Subpoenas to Prepaid Calling Card Industry,” dated July 27, 2007, *available at*

(continued...)

defendants — Voice Prepaid, Voice Distributors, and Nickolas Gulakos — filed in June 2007;<sup>3</sup> and a private lawsuit alleging fraudulent marketing practices by a telecommunications service provider owned by another defendant — Moses Greenfield — filed in March 2007.<sup>4</sup>

Notwithstanding this scrutiny of their marketing practices, Defendants have continued their deceptive conduct.

Accordingly, entry of the requested TRO and preliminary injunction is necessary to prevent Defendants from continuing to defraud consumers during the pendency of this case. Presented with nearly identical evidence of violations of the FTC Act by a different prepaid calling card distributor, a federal district court in New Jersey recently entered a TRO comparable to the order the FTC seeks here. *See FTC v. Clifton Telecard Alliance*, No. 2:08-cv-01480-PGS-ES (D.N.J. TRO entered Apr. 1, 2008).<sup>5</sup> As in *Clifton*, immediate entry of a TRO is necessary here to prevent further harm to consumers.

## STATEMENT OF FACTS

### **I. THE DEFENDANTS**

Defendants are a common enterprise of five companies that distribute prepaid calling cards and four individual defendants who own and/or manage the corporate defendants.

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<sup>2</sup>(...continued)

<http://myfloridalegal.com/newsrel.nsf/newsreleases/79D5F12C92A5BE4585257321006423E6>.

<sup>3</sup>*IDT Telecom, Inc. v. Voice Distributors, Inc.*, Civil No. 07-2465 (Mass. Super. Ct. filed June 28, 2007) (“Voice Prepaid Litigation”); FTC Ex. 1, ¶ 43, Att. HH, pp. 530-59.

<sup>4</sup>*IDT Telecom, Inc. v. CVT Prepaid Solutions, Inc.*, No. 2:07-CV-01076-SDW-MCA (D.N.J. filed Mar. 8, 2007) (“Dollar Phone Litigation”); FTC Ex. 1, ¶¶ 10, 41, Att. G, AA, pp. 62, 343, 345, 355.

<sup>5</sup>FTC Ex. 1, ¶ 102, Att. JJ, pp. 574-85.

Defendant **Alternatel, Inc. (“Alternatel”)**, is a Florida corporation with its principal place of business in Pembroke Pines, Florida.<sup>6</sup> Defendant **G.F.G. Enterprises LLC, also d/b/a Mystic Prepaid (“Mystic Prepaid”)**, is a New Jersey limited liability company with its principal place of business in Hoboken, New Jersey.<sup>7</sup> Defendants **Voice Prepaid, Inc., Voice Distributors, Inc., and Telecom Express, Inc.** (collectively “**Voice Prepaid**”) are Massachusetts corporations with their principal place of business in Medford, Massachusetts.<sup>8</sup>

Defendant **Nickolas Gulakos** is an officer, director, and 50% owner of Alternatel;<sup>9</sup> he is also the founder, sole owner, and President of Voice Prepaid,<sup>10</sup> and an owner and Member/Manager of Mystic Prepaid.<sup>11</sup> Defendant **Moses Greenfield** is an officer, director, and 50% owner of Alternatel,<sup>12</sup> as well as an owner and Member/Manager of Mystic Prepaid.<sup>13</sup> Additionally, Greenfield is the founder and CEO of non-party Dollar Phone Corporation (“Dollar Phone”), the telecommunications service provider for the majority of Alternatel, Mystic Prepaid,

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<sup>6</sup>FTC Ex. 1, ¶ 4, Att. A, p. 28.

<sup>7</sup>FTC Ex. 1, ¶¶ 6, 23, Att. C, N, pp. 48-50, 194.

<sup>8</sup>FTC Ex. 1, ¶¶ 7-9, 21, Att. D, E, F, L, pp. 52, 56, 58, 60, 188.

<sup>9</sup>FTC Ex. 1, ¶¶ 4, 41, Att. A, Z, BB, pp. 32, 34, 285, 419.

<sup>10</sup>FTC Ex. 1, ¶¶ 7-9, 41, Att. D, E, F, Z, BB, pp. 52, 56, 58-61, 286, 419.

<sup>11</sup>FTC Ex. 1, ¶¶ 6, 41, Att. C, BB, pp. 48, 419. Mystic Prepaid is a limited liability company rather than a corporation. Accordingly, its principals are identified as “Members” and its directors as “Managers.”

<sup>12</sup>FTC Ex. 1, ¶¶ 4, 41, Att. A, BB, pp. 31, 419.

<sup>13</sup>FTC Ex. 1, ¶¶ 6, 41, Att. C, BB pp. 48, 419.

and Voice Prepaid calling cards.<sup>14</sup> Defendant **Lucas Friedlander** is an owner, a Member/Manager, and the Chief Operating Officer of Mystic Prepaid as well as Controller of Voice Prepaid.<sup>15</sup> Defendant **Frank Wendorff** is President and Chief Operating Officer of Alternatel,<sup>16</sup> and has been a signatory on a bank account of Telecom Express, Inc., one of the Voice Prepaid companies.<sup>17</sup>

## II. DEFENDANTS' DECEPTIVE BUSINESS PRACTICES

Defendants develop, design, create, market, and distribute their own prepaid calling cards.<sup>18</sup> Defendants sell their cards on a wholesale basis to a network of sub-distributors and to small retail outlets, such as grocery and convenience stores, gas stations, and newsstands.<sup>19</sup> Consumers then purchase Defendants' cards from such retailers.<sup>20</sup> Defendants' cards generally

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<sup>14</sup>FTC Ex. 1, ¶¶ 10, 13, 41, 46-66, 78, 80, 82-85, Att. G, J, Z, BB, LL-TTT, pp. 62, 149-84, 285-86, 418, 639-75; FTC Ex. 2, ¶¶ 6, 15-16, Att. A-C, pp. 5-8; FTC Ex. 3, ¶¶ 12, 14, 16, 18, 20, 22, 24, 26, 28, 30, 32, 34, 36.

<sup>15</sup>FTC Ex. 1, ¶¶ 6, 23, 24, Att. C, N, O, Z, pp. 48, 50, 194, 211, 304.

<sup>16</sup>FTC Ex. 1, ¶¶ 4, 25, Att. A, P, pp. 28, 30, 31, 212.

<sup>17</sup>FTC Ex. 1, ¶ 33, Att. W, p. 271.

<sup>18</sup>FTC Ex. 1, ¶¶ 41, 43, Att. Z, FF, pp. 293, 501.

<sup>19</sup>FTC Ex. 1, ¶¶ 41, 43, 45, Att. Z, FF, pp. 285, 501; FTC Ex. 4, ¶ 4; FTC Ex. 5, ¶¶ 4-6; FTC Ex. 6, ¶ 3; FTC Ex. 7, ¶ 3.

<sup>20</sup>FTC Ex. 1, ¶ 45; FTC Ex. 4, ¶ 4; FTC Ex. 6, ¶ 3; FTC Ex. 7, ¶ 3.

retail for between \$2 and \$10.<sup>21</sup> In 2006 and 2007, Defendants took in over \$72 million from the sale of prepaid calling cards just through their Voice Prepaid bank accounts.<sup>22</sup>

Although Defendants do not provide the underlying telecommunications service for their calling cards — which they pay third parties to provide — it is Defendants that design, print, and market their cards.<sup>23</sup> As Voice Prepaid has admitted in court filings:

Voice Prepaid is engaged in the business of developing, creating, **marketing** and distributing prepaid telephone calling cards . . . . Voice Prepaid purchases long-distance telephone minutes from a connection service provider and then distinguishes this relatively fungible service by developing original designs, names and marks that it incorporates into its prepaid calling cards. Voice Prepaid incurs the costs of designing, printing, shipping, and **marketing** these original works and then sells the prepaid telephone cards through a network of local sub-distributors \* \* \* **Based upon Voice Prepaid's industry knowledge and skill, it [has] targeted certain key demographics, identified popular international calling destinations, negotiated rates for minutes with Dollar Phone for these destinations, and developed original designs, names and marks for its prepaid telephone cards.**<sup>24</sup>

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<sup>21</sup>FTC Ex. 1, ¶¶ 45-66, Att. LL-TTT, pp. 639-75; FTC Ex. 4, ¶¶ 4, 6-7; FTC Ex. 5, ¶¶ 4-6, Att. C, p. 6; FTC Ex. 6, ¶ 3; FTC Ex. 7, ¶ 3.

<sup>22</sup>FTC Ex. 1, ¶ 40.

<sup>23</sup>FTC Ex. 1, ¶ 43, Att. FF, p. 501. The corporate defendants are not telecommunications carriers. FTC Ex. 1, ¶ 43, Att. FF, II, pp. 501, 563. Dollar Phone, which is owned by Defendant Moses Greenfield, is the telecommunications provider for the majority of Defendants' calling cards. FTC Ex. 1, ¶¶ 10, 13, 41, 46-66, 78, 80, 82-85, Att. G, J, Z, BB, LL-TTT, pp. 62, 149-84, 285-86, 418, 639-75; FTC Ex. 2, ¶¶ 6, 15-16, Att. A-C, pp. 5-8; FTC Ex. 3, ¶¶ 12, 14, 16, 18, 20, 22, 24, 26, 28, 30, 32, 34, 36.

<sup>24</sup>FTC Ex. 1, ¶ 43, Att. FF, p. 501 (emphasis added). Voice Prepaid made this representation in a brief filed in the Voice Prepaid Litigation, *see supra* note 3. In that lawsuit, IDT, a prepaid calling card company, alleges that Voice Prepaid has engaged in deceptive marketing practices in violation of the Massachusetts state consumer protection statute.

Defendants' cards typically display the name or logo of Alternatel, Mystic Prepaid, or Voice Prepaid along with one of a wide variety of Defendants' "brand" names, including: "Aló Mamá," "Tree Monkey," "Rey de Florida," "Taco Libre," "Oi Brasil," "Coffee Time Call Me Time," "Dangerous Minutes!," "Mama Africa," "Martini," "Voz Do Brasil," and "Nigeria Connect."<sup>25</sup> Although Alternatel, Mystic Prepaid, and Voice Prepaid operate in different geographic regions,<sup>26</sup> they often sell the same brands of cards, to which Voice Prepaid owns the trademark.<sup>27</sup> For example, Alternatel, Mystic Prepaid, and Voice Prepaid each distribute "Aló Mamá," "Tree Monkey," and "Coffee Time Call Me Time" cards in their respective geographic regions. Whether distributed by Alternatel, Mystic Prepaid, or Voice Prepaid, Defendants' cards, and the marketing materials for the cards, are nearly indistinguishable in appearance.<sup>28</sup>

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<sup>25</sup>FTC Ex. 1, ¶¶ 47, 49, 51, 52, 53, 56, 63, 65, Att. MM, PP, UU, WW, XX, EEE, NNN, RRR, pp. 640, 643, 644, 648, 650, 651, 658, 668, 673.

<sup>26</sup>Alternatel distributes prepaid calling cards in Florida, Mystic Prepaid distributes prepaid calling cards in New Jersey and Philadelphia, Pennsylvania, and Voice Prepaid distributes prepaid calling cards in Massachusetts, New Hampshire, and Rhode Island. FTC Ex. 1, ¶¶ 41, 43, 45, Att. Z, BB, FF, pp. 285, 417, 419, 501-02; FTC Ex. 4, ¶ 4; FTC Ex. 5, ¶¶ 4-6; FTC Ex. 6, ¶ 3; FTC Ex. 7, ¶ 3.

<sup>27</sup>In addition to owning the trademarks for a number of the brand names of the calling cards sold by Alternatel, Mystic Prepaid, and Voice Prepaid, Voice Prepaid also owns the copyrights to the artwork used in marketing a number of these cards. FTC Ex. 1, ¶¶ 11-12, 14-20, Att. H, I, K, pp. 63-149, 185-86.

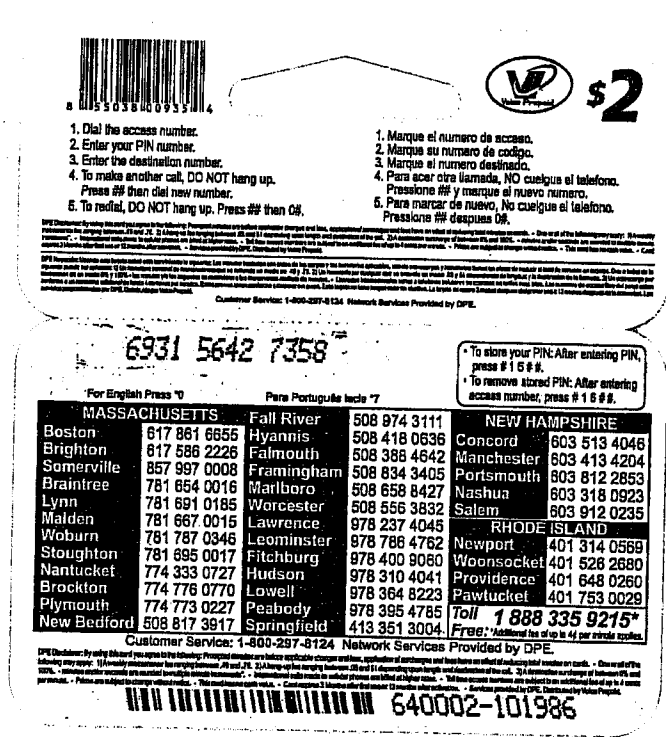
<sup>28</sup>The cards differ in appearance only in that they display the corporate logo of the particular company distributing the card (e.g., the Voice Prepaid "Tree Monkey" card displays a "VP" logo, the Mystic Prepaid "Tree Monkey" card displays an "MP" logo, and the Alternatel version of the card has an "Alternatel" logo). FTC Ex. 1, ¶ 51, Att. UU, pp. 648 (Voice Prepaid Tree Monkey card); FTC Ex. 1, ¶ 58, Att. GGG, p. 660 (Alternatel Tree Monkey card); FTC Ex.1, ¶ 62, Att. LLL, p. 666 (Mystic Prepaid Tree Monkey card).

**A. Defendants' Cards**

Below is a photocopy of one of Defendants' calling cards<sup>29</sup>:



Front of Card (actual size)



Back of Card (actual size)

The card is printed on laminated paper and, as shown here, contains two detachable portions: a top portion, or “hang tag,” and a bottom portion, which is the calling card itself. The front of the card displays the relevant corporate logo (here, the “VP Voice Prepaid” logo) and the brand name of the card (here, “Tree Monkey”). As with most of Defendants’ cards, as shown above, the back of the hang tag includes directions for how to use the card in both English and Spanish and the relevant corporate logo. The back of the hang tag and/or the back of the card itself also includes disclosures in small print regarding fees and charges. Although the

<sup>29</sup>FTC Ex. 1, ¶ 51, Att. UU, p. 648.

