

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

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FEDERAL TRADE COMMISSION,		)	
		)	Civ. No.
Plaintiff,		)	
		)	
v.		)	
		)	
THE TRACKER CORPORATION OF AMERICA		)	
d/b/a Consumer Protection Services,		)	
		)	
Defendant.		)	
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**COMPLAINT FOR PERMANENT INJUNCTION  
AND OTHER EQUITABLE RELIEF**

Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), for its complaint alleges:

1. The FTC brings this action under Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, and the Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing Act"), 15 U.S.C. § 6101 et seq., to obtain preliminary and permanent injunctive relief, rescission or reformation of contracts, restitution, disgorgement, and other equitable relief for defendant's unfair or deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the FTC's Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310.

### **JURISDICTION AND VENUE**

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 53(b), 57b, 6102(c), and 6105(b).

3. Venue in the Northern District of Georgia, Atlanta Division, is proper under 28 U.S.C. §§ 1391(b) and (c), and 15 U.S.C. §§ 53(b), and 6103(e).

### **PLAINTIFF**

4. Plaintiff, FTC, is an independent agency of the United States Government created by statute. 15 U.S.C. § 41 *et seq.* The Commission 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. The Commission is authorized to initiate federal district court proceedings by its own attorneys to enjoin violations of the FTC Act and the TSR to secure such equitable relief as may be appropriate in each case, and to obtain consumer redress. 15 U.S.C. §§ 53(b), 57b, 6102(c), and 6105(b).

### **DEFENDANT**

5. Defendant The Tracker Corporation of America ("Tracker") is a Delaware corporation that does or has done business as Consumer Protection Services. Tracker maintains

offices in the United States at 2440 Cobb Parkway, Smyrna, GA 30080, and 237 Park Avenue, New York, NY 10017. Tracker's office in Canada is located at 180 Dundas Street West, Suite 1502, Toronto, Ontario, Canada. Tracker transacts or has transacted business in the Northern District of Georgia.

### **COMMERCE**

6. At all times relevant to this complaint, defendant has maintained a substantial course of trade in the offering for sale and sale, through telemarketing, of credit card protection services, in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

### **DEFENDANT'S BUSINESS PRACTICES**

7. Since at least July 1996, defendant has telemarketed credit card protection services throughout the United States.

8. To induce consumers to purchase defendant's services, defendant's telemarketers, using the name Consumer Protection Services, represent, either expressly or by implication, that the telemarketer is calling from the consumer's credit card issuer, and that the purpose of the call is to update the company's records.

9. Defendant's telemarketers then tell consumers that thieves have been breaking into computers, stealing consumers'

credit card account information, and using that information to make unauthorized charges.

10. Defendant's telemarketers next tell consumers that if the consumers' credit cards are lost or stolen, or if someone uses stolen account information without authorization, consumers have only 48 hours to report the loss to their credit card issuer.

11. Defendant's telemarketers also represent, expressly or by implication, that the consumers' failure to report such credit card loss, theft, or unauthorized use within 48 hours could render the consumers liable for any unauthorized charges.

12. For a fee of \$189, defendant's telemarketers offer consumers, among other things, protection for up to \$10,000 to cover such charges.

**VIOLATIONS OF SECTION 5 OF THE FTC ACT**  
**COUNT I**

13. In numerous instances, in connection with the telemarketing of credit card protection services to consumers, defendant has represented, expressly or by implication, that:

- a. Defendant is affiliated with, or is calling from or on behalf of a consumer's credit card issuer; and
- b. A consumer has only 48 hours to report the loss, theft, or unauthorized use of the consumer's

credit card to the consumer's card issuer, and that the consumer's failure to do so could render the consumer liable for any unauthorized charges.

14. In truth and in fact, in numerous instances:

- a. Defendant is not affiliated with, or calling from or on behalf of the consumer's credit card issuer; and
- b. Under Section 226.12(b) of Regulation Z, 12 C.F.R. § 226.12(b), and Section 133 of the Truth in Lending Act, 15 U.S.C. § 1643, a consumer is not required to report the loss, theft, or unauthorized use of the consumer's credit card to the consumer's card issuer within 48 hours, and the consumer cannot be held liable for more than \$50 for any unauthorized charges.

15. Therefore, defendant's representations, as set forth in paragraph 13, 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).

#### **THE FTC'S TELEMARKETING SALES RULE**

16. In the Telemarketing Act, 15 U.S.C. § 6101, *et seq.*, Congress directed the Commission to prescribe rules prohibiting deceptive and abusive telemarketing acts or practices. On August

16, 1995, the Commission promulgated the TSR, 16 C.F.R. Part 310. The TSR became effective on December 31, 1995.

17. Defendant is a "seller" or "telemarketer" engaged in "telemarketing," as those terms are defined in the TSR, 16 C.F.R. §§ 310.2(r), (t), and (u).

18. The TSR prohibits telemarketers and sellers from "making a false or misleading statement to induce any person to pay for goods or services." 16 C.F.R. § 310.3(a)(4).

19. 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), violations of the TSR constitute unfair or deceptive acts or practices in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

**VIOLATIONS OF THE TELEMARKETING SALES RULE**  
**COUNT II**

20. In numerous instances, in connection with the telemarketing of credit card protection services, defendant has represented, expressly or by implication, that:

- a. Defendant is affiliated with, or is calling from or on behalf of a consumer's credit card issuer; and
- b. A consumer has only 48 hours to report the loss, theft, or unauthorized use of the consumer's credit card to the consumer's card issuer, and

that the consumer's failure to do so could render the consumer liable for any unauthorized charges.

21. In truth and in fact, in numerous instances:

- a. Defendant is not affiliated with, or calling from or on behalf of the consumer's credit card issuer; and
- b. Under Section 226.12(b) of Regulation Z, 12 C.F.R. § 226.12(b), and Section 133 of the Truth in Lending Act, 15 U.S.C. § 1643, a consumer is not required to report the loss, theft, or unauthorized use of the consumer's credit card to the consumer's card issuer within 48 hours, and the consumer cannot be held liable for more than \$50 for any unauthorized charges.

22. Therefore, defendant's representations, as alleged in paragraph 20, constitute false or misleading statements to induce a person to pay for goods or services, and are deceptive telemarketing acts or practices in violation of Section 310.3(a)(4) of the TSR, 16 C.F.R. § 310.3(a)(4).

#### **CONSUMER INJURY**

23. Consumers throughout the United States have suffered substantial monetary loss as a result of defendant's unlawful acts or practices. Absent injunctive relief, defendant is likely

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

**THIS COURT'S POWER TO GRANT RELIEF**

24. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and other ancillary relief, including consumer redress, disgorgement, and restitution, to prevent and remedy any violations of any provision of law enforced by the Commission.

25. Section 19 of the FTC Act, 15 U.S.C. § 57b, and Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b), empower this Court to grant such relief as the Court finds necessary to redress injury to consumers or other persons resulting from defendant's violations of the TSR, including the rescission or reformation of contracts, and the refund of money.

26. This Court, in the exercise of its equitable jurisdiction, may award other ancillary relief to remedy the injury caused by the defendant's law violations.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff requests that this Court, as authorized by Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b), and pursuant to its own equitable powers:



1. Award plaintiff such preliminary injunctive and ancillary equitable 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;

2. Permanently enjoin defendant from violating the FTC Act and the TSR as alleged herein;

3. Award such relief as the Court finds necessary to redress injury to consumers resulting from defendant's violations of the FTC Act and the TSR, including but not limited to, rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies; and

4. 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,

DEBRA A. VALENTINE  
GENERAL COUNSEL

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