

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FT. LAUDERDALE DIVISION**

Civil No.

FEDERAL TRADE COMMISSION, and)
)
STATE OF WISCONSIN,)
)
Plaintiffs,)
)
v.)
)
FIRST IMPRESSIONS, INC., a Delaware Corporation, doing business as AIR-LAND-SEA RESERVATIONS, INC.;)
)
AIR-LAND-SEA TRAVEL, INC., a Florida Corporation; ation;)
)
VACATIONS ARE US, INC., a Florida Corporation;)
)
VACATION WORLD, INC., a Florida Corporation;)
)
JOHN MARK BUNDY, individually and as an officer or director of First Impressions, Inc., d/b/a Air-Land-Sea Reservations, Inc; Air-Land-Sea Travel, Inc.; and Vacations Are Us, Inc.; and)
)
LLOYD RAY McDADE, individually and as an officer or director of Vacation World, Inc.;)
Defendants.)

COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF

Plaintiffs, the Federal Trade Commission (“FTC” or “the Commission”) and the State of Wisconsin, for their complaint allege:

1. The Commission 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 secure preliminary and permanent injunctive relief, restitution, rescission or reformation of contracts, disgorgement, and other equitable relief for Defendants’ 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, 16 C.F.R. Part 310.

2. The State of Wisconsin brings this action under Section 4(a) of the Telemarketing Act, 15 U.S.C. § 6103(a), to secure similar injunctive and equitable relief.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction pursuant to 15 U.S.C. §§ 45(a), 53(b), 57b, 6102(c), 6103(a), and 6105(b), and 28 U.S.C. §§ 1331, 1337(a), and 1345.

4. Venue in the Southern District of Florida is proper under 15 U.S.C. §§ 53(b) and 6103(a) and 28 U.S.C. § 1391(b) and (c).

PLAINTIFFS

5. Plaintiff, the Federal Trade Commission, 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 also enforces the Telemarketing Sales Rule, 16 C.F.R. Part 310, which prohibits deceptive or abusive telemarketing acts or practices. The Commission is authorized to initiate federal district court proceedings, by

its own attorneys, to enjoin violations of the FTC Act and violations of the Telemarketing Sales Rule, in order 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).

6. Plaintiff the State of Wisconsin is one of the fifty sovereign states of the United States. James E. Doyle is the duly elected Attorney General acting for the State of Wisconsin and brings this action in his official capacity as its chief law enforcement officer. The chief law enforcement officer of a state is authorized to initiate federal district court proceedings to enjoin telemarketing that violates the Commission's Telemarketing Sales Rule, and, in each such case, to obtain damages, restitution, and other compensation on behalf of residents of the state, and to obtain such further and other relief as the Court may deem appropriate. 15 U.S.C. § 6103(a).

DEFENDANTS

7. Defendant First Impressions, Inc. ("First Impressions"), is a Delaware corporation with its principal place of business at 915 Middle River Drive, Suite 600, Ft. Lauderdale, Florida 33304. Alone or in conjunction with other defendants, First Impressions does business as Air-Land-Sea Reservations, Inc., Vacation World, Inc., and Vacations Are Us, Inc. First Impressions transacts or has transacted business in the Southern District of Florida and elsewhere.

8. Defendant Air-Land-Sea Travel, Inc. ("Air-Land-Sea Travel"), is a Florida corporation with its principal place of business at 915 Middle River Drive, Suite 600, Ft. Lauderdale, Florida 33304. Air-Land-Sea Travel transacts or has transacted business in the Southern District of Florida and elsewhere.

9. Defendant Vacations Are Us, Inc. (“Vacations Are Us”), is a Florida corporation with its principal place of business at 915 Middle River Drive, Suite 270, Ft. Lauderdale, Florida 33304. Vacations Are Us transacts or has transacted business in the Southern District of Florida and elsewhere.

10. Defendant Vacation World, Inc. (“Vacation World”), is a Florida corporation with its principal place of business at 3230 NE 9th Street, 600, Ft. Lauderdale, Florida 33304. Alone or in conjunction with other defendants, Vacation World does business as Air-Land-Sea Reservations, Inc. Vacation World transacts or has transacted business in the Southern District of Florida and elsewhere.

11. John Mark Bundy is an owner, director, officer, or manager of defendants First Impressions and Vacations Are Us. 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 the corporate defendants. In connection with matters alleged herein, he has transacted business in the Southern District of Florida.

12. Defendant Lloyd Ray McDade is an owner, director, officer, or manager of defendant Vacation World. At some or 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 the corporate defendants. In connection with matters alleged herein, he has transacted business in the Southern District of Florida.

13. Since at least 1997, the corporate defendants have been engaged in a common enterprise nationwide to promote, offer to sell, and sell vacation travel packages.

COMMERCE

14. At all times relevant to this complaint, the 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’ COURSE OF CONDUCT

15. Since at least 1997, the Defendants have operated a common business enterprise to deceive consumers throughout the United States and in Canada through the deceptive telemarketing of vacation travel packages. In operating their common business enterprise, Defendants have common officers, employees, offices, and a common goal to sell their vacation travel packages and ultimately timeshares. Defendants sell or assist others in selling vacation travel packages, which typically include accommodations in Florida and a cruise to the Bahamas with accommodations in the Bahamas. Once consumers arrive in Florida to take their vacations, they are pressured into attending a sales presentation concerning the purchase of timeshares.

16. Defendants operate their scheme through a number of telemarketing boilerrooms throughout the United States, including Vacations Are Us and Vacation World. In those instances, Defendants enter into contracts with outside telemarketers, who sell Defendants’ vacation travel packages. Under these contracts, Defendants provide substantial assistance to the telemarketers which assistance enables the telemarketers to sell Defendants’ vacations to consumers.

17. Defendants or their telemarketers contact consumers in several ways, including telephone solicitation, direct mail solicitation, and soliciting consumers at flower shows, travel shows, and fairs to enter drawings for a “free” vacation or other products and services.

18. In many cases, Defendants or their telemarketers telephone consumers who have entered drawings for a “free” vacation or other products and services and inform them that they have won or have been specially selected to receive a vacation. Defendants or their telemarketers describe the vacation travel package consumers have won as being worth \$3,000. In reality, they contact or attempt to contact all consumers who entered the drawing, none of whom have “won” anything.

19. Defendants or their telemarketers describe the vacation travel packages to consumers as consisting of twelve to nineteen days and including trips to Ft. Lauderdale, Orlando, Grand Bahama Island, Cancun, and Las Vegas. Consumers are told that the vacation package may be taken all at once or may be split up. Numerous representations are made about the very high quality of the hotels and cruise ships included in the vacation package.

20. Defendants or their telemarketers tell consumers that all expenses are covered except for port charges and Bahamian taxes. While many consumers are told that airfare is not included, in some cases they are not. Many consumers are told that the only restriction is that consumers have either twelve or twenty four months to take the trip. Consumers are told that they must decide immediately whether to accept and that if they say no, another “winner” will be selected instead. No written materials are provided prior to the consummation of the sale.

21. Consumers who agree to purchase Defendants’ vacation travel packages are then transferred to an employee or agent of Air-Land-Sea Reservations, who asks for credit card and other information. Once the consumers’ credit card numbers or bank account numbers are obtained, a charge, generally in the total amount of \$299 per person, is made against the

consumers' accounts. While Defendants sometimes disclose that consumers will be required to sit through a short timeshare presentation, consumers are not told that the presentations will be lengthy. Defendants routinely advise consumers that their vacation travel packages are non-refundable.

22. Many consumers attempt to cancel their vacation either soon after the end of the telemarketing sales call, or after they receive the confirmation package and discover that there are additional costs or other previously undisclosed terms and conditions. Consumers find it difficult to reach Defendants' offices to request a refund, and when they do they are initially told that the charge is non-refundable, although most who persist eventually receive them.

23. Consumers who attempt to use the vacation travel packages discover that there are significant undisclosed charges. They learn that the \$299 per person covers only mid-grade hotels and that if they wish to stay in top quality hotels such as those described by the telemarketers, they must pay significant sums of money in order to upgrade.

24. Those consumers who actually take the vacation discover that they must spend a significant portion of the vacation attending timeshare presentations and sales pitches that extend as long as five hours. In numerous instances, consumers are led to believe that they will not receive their cruise ship vouchers unless they attend the timeshare presentation.

THE FEDERAL TRADE COMMISSION ACT

25. 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."

VIOLATION OF SECTION 5 THE FTC ACT

COUNT I

(By Plaintiff Federal Trade Commission)

26. In numerous instances since at least 1997, in connection with the advertising, marketing, promotion, offering for sale, or sale of vacation travel packages, Defendants have represented, expressly or by implication, that consumers have won or been specially selected to receive a vacation.

27. In truth and fact, consumers have neither won nor been specially selected to receive vacations; they must purchase their vacation packages.

28. Therefore, Defendants' representation is false and misleading and constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT II
(By Plaintiff Federal Trade Commission)

29. In numerous instances since at least 1997, in connection with the advertising, marketing, promotion, offering for sale, or sale of vacation travel packages, Defendants have represented, expressly or by implication, that consumers who pay the amount specified in the initial solicitation or the initial sales call will receive the vacation described in that initial solicitation or sales call.

30. In truth and fact, consumers who pay the amount specified in the initial solicitation or the initial sales call will not receive the vacation described in that initial solicitation or sales call.

31. Therefore, Defendants' representation is false and misleading and constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

THE TELEMARKETING SALES RULE

32. In the Telemarketing Act, 15 U.S.C. § 6101 *et seq.*, Congress directed the FTC to prescribe rules prohibiting abusive and deceptive telemarketing acts or practices. On August 16, 1995, the Commission promulgated the Telemarketing Sales Rule, 16 C.F.R. Part 310. The Rule became effective on December 31, 1995.

33. Defendants are "sellers" or "telemarketers" engaged in "telemarketing," as those terms are defined in the Telemarketing Sales Rule, 16 C.F.R. §§ 310.2(r), (t) and (u).

34. The Telemarketing Sales Rule prohibits sellers and telemarketers "[b]efore a customer pays for goods or services offered . . . from failing to disclose, in a clear and

conspicuous manner . . . [t]he total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of the sales offer.” 16 C.F.R. § 310.3(a)(1)(i).

35. The Telemarketing Sales Rule prohibits sellers and telemarketers “[b]efore a customer pays for goods or services offered . . . from failing to disclose, in a clear and conspicuous manner . . . [a]ll material restrictions, limitations, or conditions to purchase, receive, or use the goods or services that are the subject of the sales offer.” 16 C.F.R. § 310.3(a)(1)(ii).

36. The Telemarketing Sales Rule also prohibits sellers and telemarketers from “[m]isrepresenting, directly or by implication, . . . [a]ny material aspect of a prize promotion including, but not limited to, the odds of being able to receive a prize, the nature or value of a prize, or that a purchase or payment is required to win a prize or to participate in a prize promotion.” 16 C.F. R. § 310.3(a)(2)(v).

37. The Telemarketing Sales Rule also prohibits any person from providing substantial assistance or support to any seller or telemarketer when that person knows or consciously avoids knowing that the seller or telemarketer is engaged in any act or practice in violation of the Telemarketing Sales Rule, such as the acts or practices described in Paragraphs 29-32. 16 C.F.R. § 310.3(b).

38. 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 Telemarketing Sales Rule 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 FTC TELEMARKETING SALES RULE

COUNT III

(By Plaintiffs Federal Trade Commission and State of Wisconsin)

39. In numerous instances, in connection with the advertising, marketing, promotion, offering for sale, or sale of vacation travel packages, Defendants have failed to disclose, in a clear and conspicuous manner before consumers pay for the vacation package, all material restrictions, limitations or conditions to purchase, receive, or use the goods or services that are the subject of the sales offer, including, but not limited to, that consumers are expected to attend a lengthy sales presentation for timeshare vacation property. Defendants have thereby violated Section 310.3(a)(1)(ii) of the Telemarketing Sales Rule, 16 C.F.R. § 310.3(a)(1)(ii).

COUNT IV

(By Plaintiffs Federal Trade Commission and State of Wisconsin)

40. In numerous instances, in connection with the advertising, marketing, promotion, offering for sale, or sale of vacation travel packages, Defendants have failed to disclose, in a clear and conspicuous manner before consumers pay for the vacation package, the total costs to purchase, receive, or use any goods or services that are the subject of the sales offer, including, but not limited to, that the hotel accommodations promised may be available only for an additional charge. Defendants have thereby violated Section 310.3(a)(1)(i) of the Telemarketing Sales Rule, 16 C.F.R. § 310.3(a)(1)(i).

COUNT V

(By Plaintiffs Federal Trade Commission and State of Wisconsin)

41. In numerous instances, in connection with the advertising, marketing, promotion, offering for sale, or sale of vacation travel packages, defendants have misrepresented, directly or by implication, material aspects of prize promotions including, but not limited to, statements that consumers have won or been specially selected to receive a vacation. Defendants have thereby violated Section 310.3(a)(2)(v) of the Telemarketing Sales Rule, 16 C.F.R. § 310.3(a)(2)(v).

COUNT VI

(By Plaintiffs Federal Trade Commission and State of Wisconsin)

42. In numerous instances, in connection with the advertising, marketing, promotion, offering for sale, or sale of vacation travel packages, Defendants' telemarketers have: 1) failed to disclose, in a clear and conspicuous manner before consumers pay for the vacation package, the total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of the sales offer; 2) failed to disclose, in a clear and conspicuous manner before the customer pays, or misrepresented, directly or by implication, material restrictions, limitations, or conditions to purchase, receive, or use the goods or services that are the subject of the sales offer; or 3) misrepresented material aspects of prize promotions. Defendants' telemarketers have thereby violated Sections 310.3(a)(1)(i), 310.3(a)(1)(ii), and 310.3(a)(2)(v) of the Telemarketing Sales Rule, 16 C.F.R. §§ 310.3(a)(1)(ii), 310.3(a)(1)(ii), and 310.3(a)(2)(v).

43. In numerous instances, in connection with providing various services to their telemarketers, Defendants have provided substantial assistance or support to their telemarketers, knowing, or consciously avoiding knowing, that their telemarketers were engaged in acts or

practices that violate Section 310.3(a) of the Telemarketing Sales Rule as set forth in paragraph 42 above. Defendants have thereby violated Section 310.3(b) of the Telemarketing Sales Rule, 16 C.F.R. §310.3(b).

CONSUMER INJURY

44. Consumers throughout the United States, including in the State of Wisconsin, 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, Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public.

THIS COURT'S POWER TO GRANT RELIEF

45. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), authorizes this Court to issue a permanent injunction against the Defendants' violations of the FTC Act and, in the exercise of its equitable jurisdiction, to order such ancillary relief as preliminary injunction, consumer redress, rescission, restitution and disgorgement of profits resulting from the Defendants' unlawful acts or practices, and other remedial measures.

46. 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), authorize the Court to grant to the FTC such relief as the Court finds necessary to redress injury to consumers or other persons resulting from Defendants' violations of

the Telemarketing Sales Rule, including the rescission and reformation of contracts and the refund of money.

47. Section 4(a) of the Telemarketing Act, 15 U.S.C. § 6103(a), authorizes this Court to grant to the State of Wisconsin, on behalf of its residents, injunctive and other equitable relief, including damages, restitution, other compensation, and such further and other relief the Court deems appropriate.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Federal Trade Commission and State of Wisconsin, pursuant to Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, Sections 4(a) and 6(b) of the Telemarketing Act, 15 U.S.C. §§ 6103(a) and 6105(b), and the Court's own equitable powers, request that the Court:

1. Award Plaintiffs 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, including but not limited to, temporary and preliminary injunctions, appointment of a receiver for First Impressions, Air-Land-Sea Travel, Vacations Are Us, and Vacation World, and an order freezing certain Defendants' assets;
2. Permanently enjoin the Defendants from violating the FTC Act and the Telemarketing Sales Rule, as alleged herein;
3. Award such relief as the Court finds necessary to redress injury to consumers resulting from the Defendants' violations of the FTC Act and the Telemarketing Sales Rule

including, but not limited to, rescission or reformation of contracts, restitution, refund of monies paid, and disgorgement of ill-gotten monies; and

4. Award Plaintiffs 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,

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