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CLARENCE MADDOX
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

05-22465

Case No. CIV-UNRAID-BENAGES

MAGISTRATE JUDGE
SULLIVAN

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

PLATINUM HEALTH PLUS, LLC; FIESTA
MARKETING, LLC; TELEMEDIA, LLC;
MICHAEL P. GARCIA; and ALEXANDER
R. GARCIA,

Defendants.

COMPLAINT FOR PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF

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

1. The FTC brings this action under Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), to obtain permanent injunctive relief, restitution, rescission or reformation of contracts, disgorgement, and other equitable relief for defendants' acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction pursuant to 15 U.S.C. §§ 45(a), and 53(b), and 28 U.S.C. §§ 1331, 1337(a), and 1345.

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

PLAINTIFF

4. Plaintiff is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58, as amended. 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. The FTC is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act, and to secure such equitable relief as may be appropriate in each

COPY

FEDERAL TRADE COMMISSION
915 Second Ave., Su. 2896
Seattle, Washington 98174
(206) 220-6350

1 **COMMERCE**

2 10. At all times relevant to this Complaint, defendants have maintained a substantial course
3 of trade or business in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act,
4 15 U.S.C. § 44.

5 **DEFENDANTS' BUSINESS PRACTICES**

6 11. Since at least February 2003, defendants, acting alone or in concert with others, have
7 solicited Spanish-speaking consumers throughout the country to purchase the Platinum Health Plus
8 medical discount program. Consumers who purchase the program can obtain discounted medical
9 services through national networks of providers. As part of the program, defendants also provide
10 insurance policies that cover accidental death and dismemberment, and hospitalization due to accident.
11 To purchase the program, defendants have charged consumers an initial fee of between \$100 and \$125
12 plus monthly service fees of between \$39.95 and \$59.95. The fee for the first month of service is billed
13 at the time of enrollment.

14 12. Defendants have placed advertisements on Spanish language television stations
15 throughout the country for the Platinum Health Plus program. One television advertisement featuring a
16 popular Latino entertainer, Javier Romero, that ran nationwide through at least July 2004, stated (in
17 Spanish):

18 Javier Romero: If you don't have health insurance, pay
19 attention to this important message.

20 Text appears on bottom of screen throughout ad:
21 PLATINUM HEALTH PLUS 1-800-213-4391

22 Javier Romero: For less than \$2.00 a day, your whole
23 family can have access to doctors, dentists, hospitals,
24 prescription medicine, 24-hour nurse hotline and more.

25 Text appears prominently down left side of screen while
26 Romero speaking:

27 Doctors
28 Dentists
Hospitals
Medicine
24-Hour Nurse Hotline
No Limits On Use
No Deductibles

1 Javier Romero: Also \$25,000 for accidental death and up
2 to \$5000 of medical attention due to accident

3 Text appears on left side of screen while Romero
4 speaking (footnote* is in small font):

5 \$25,000* Accidental death;
6 \$5,000* Medical attention due to accident

7 *Additional benefits are at no cost.
8 PHP is not health insurance.

9 Young couple: Thank You Platinum Health Plus!

10 Javier Romero: As a member, I, Javier Romero,
11 recommend this to you.

12 Older couple: Thank you Platinum Health Plus!

13 Young family: What a good decision.

14 Javier Romero: Don't wait any longer. Call now!

15 Text appears on screen: 650,000 providers

16 13. Another advertisement that aired beginning in June 2004, stated (in Spanish):

17 Woman Doctor: Being without medical care in this
18 country is very dangerous. Pay attention to this important
19 message from Platinum Health Plus.

20 Text appears on bottom of screen throughout ad:
21 PLATINUM HEALTH PLUS 1-800-635-0932

22 Woman Doctor: For less than \$2.00 a day, your whole
23 family can have discounts with doctors, dentists,
24 hospitals, and medicine, with access to a 24-hour nurse
25 hotline. There are no limits on usage and everyone
26 qualifies.

27 Text appears prominently down left side of screen while
28 Doctor speaking:

Doctors
Dentists
Hospitals
Medicine
24-Hour Nurse Hotline
No Limits On Use.

EVERYONE QUALIFIES!

Young Couple with children: The 24-hour nurse hotline is
an excellent benefit. Thank You Platinum Health Plus!

1 Woman Doctor: Also, you'll receive up to \$25,000 for
2 accidental death and up to \$5,000 of medical attention per
3 accident All for less than \$2 per day.

4 Text appears prominently on left side of screen while
5 Doctor speaking (footnote* is in small font):

6 \$25,000* Accidental death;
7 \$5,000* Medical attention due to accident

8 *Additional benefits are at no cost.
9 PHP is not health insurance.

10 Man: The \$5,000 I received after my accident covered all
11 my medical expenses. I don't know what I would have
12 done without Platinum Health Plus.

13 14. The claims made in Platinum advertisements created the impression for many
14 consumers that Platinum was an insurance plan. The disclosures that "PHP is not health insurance,"
15 appear in small font as a footnote that appears on the screen for 8 seconds, below the text describing
16 the insurance benefits that Romero and the Doctor are simultaneously describing orally. In the Romero
17 ad the disclosure is in a light gray color on a white background, it appears in black on white in the
18 Doctor ad. The disclosures use the term "PHP," which appears nowhere else in the ad, and are
19 preceded by a sentence referencing the insurance policies. These disclosures, if seen by the consumers,
20 are not adequate to disclaim the strong implied claims made elsewhere in the ad that Platinum Health
21 Plus is an insurance plan.

22 15. When consumers called in response to Platinum television advertisements, defendants'
23 sales representatives repeated the claims made in the television advertisements. The script in use until
24 at least September 2004 stated (in Spanish):

25 Platinum Health Plus is a health plan that is designed to
26 combat the high costs of health insurance by offering
27 incredible discounts, without having to deal with the
28 exigencies of health insurance. With this plan you do not
need to worry about pre-existing health conditions, age,
deductibles or limits on use. You only need to present
your membership card at one of our 650,000 providers
and you will receive your benefits immediately.

16. Many consumers who were reluctant to enroll without knowing more about how the
Platinum program worked were told by the sales representative that if they were dissatisfied with the
program or wanted their money back for any reason, there was an unconditional 30-day money back

1 guarantee. Platinum, however, did not provide an unconditional money back guarantee. The Platinum
2 money back guarantee required the consumer to use the program once within the first thirty days to
3 qualify for a refund.

4 17. Advertisements that ran through April 2004 did not reference the Platinum refund
5 policy. In May 2004, however, some Platinum television advertisements began touting the Platinum
6 “exclusive guarantee.” For example, one advertisement that ran nationwide beginning in May 2004,
7 stated (in Spanish), “With the exclusive Platinum Health Plus guarantee, you can become a member
8 today without any risk.” Appearing at the same time as the audio statement of “no risk,” is text
9 disclosing the actual refund policy in small font sandwiched between two prominent statements,
10 “EXCLUSIVE GUARANTEE,” and “Sign up Today Without Any Risk!” “Exclusive Guarantee,” and
11 “Sign Up Today Without Any Risk” appear in much larger font than the rest of the refund policy
12 disclosure, and the “no risk” statement is in a bright highly visible color. The “no risk” text remains on
13 the screen after the rest of the disclosure is off screen. The “no risk” claims are reasonably understood
14 as express claims of an unconditional money back guarantee. Such express claims are not disclaimed
15 by the much less prominent disclosure of the actual refund policy.

16 18. Until at least September 2004, the actual Platinum refund policy was not mentioned at
17 all during the telephone sales presentation. After the consumer had agreed to pay and had given
18 Platinum credit account or checking account information, the refund policy was hastily disclosed as
19 part of a lengthy presentation read during the verification portion of the sales presentation, wherein the
20 consumer’s address, account information, and payment authorization were confirmed. Many
21 consumers either did not hear or did not understand the refund policy disclosed during the verification
22 portion of the sales call. This disclosure also did not prevent consumers from being misled by express
23 misrepresentations in the advertisements and sales presentations about the Platinum refund policy.

24 VIOLETIONS OF SECTION 5 OF THE FTC ACT

25 **COUNT ONE**

26 19. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits unfair or deceptive acts or
27 practices in or affecting commerce. Misrepresentations or omissions of material fact constitute
28 deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

1 jurisdiction, to order such ancillary relief as rescission, restitution, and disgorgement of profits
2 resulting from defendants' unlawful acts or practices.

3 28. This Court, in the exercise of its equitable jurisdiction may award other ancillary relief
4 to remedy injury caused by defendants' law violations.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, plaintiff pursuant to Sections 13(b) of the FTC Act, 15 U.S.C. § 53(b) and the
7 Court's own equitable powers, requests that the Court:

- 8 a. Permanently enjoin the defendants from violating the FTC Act, as alleged
9 herein;
- 10 b. Award such relief as the Court finds necessary to redress injury to consumers
11 resulting from defendants' violations of the FTC Act including, but not limited
12 to refund of monies paid; and
- 13 c. Award plaintiff the costs of bringing this action, as well as such other and
14 additional relief as the Court may determine to be just and proper.

15
16 Dated: 9/8, 2005

17 Respectfully Submitted,

18 WILLIAM BLUMENTHAL
19 General Counsel

20 

21 ELEANOR DURHAM
22 KIAL S. YOUNG
23 915 2nd Ave., Rm. 2896
24 Seattle, WA 98174
25 206-220-4476 (Durham)
26 206-220-6351 (Young)
27 206-220-6366 (Fax)
28 Attorneys for Plaintiff
Federal Trade Commission