

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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U.S. DISTRICT COURT
EASTERN DISTRICT
OF NEW YORK

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

THE CUBAN EXCHANGE, INC., also d/b/a
CrediSure America and also d/b/a **MyiPad.us**, a
corporation,

and

SUHAYLEE RIVERA, individually and as an
officer or director of The Cuban Exchange, Inc.,

Defendants.

Case No. 5890

**PLAINTIFF FEDERAL TRADE
COMMISSION'S COMPLAINT
FOR PERMANENT INJUNCTION
AND OTHER EQUITABLE
RELIEF**

GARAUFIS, J.

LEVY, M.J.

Plaintiff, the Federal Trade Commission ("FTC"), 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. §§ 6101-6108, to obtain temporary, preliminary, and permanent injunctive relief, rescission or reformation of contracts, restitution, the refund of monies paid, disgorgement of ill-gotten monies, 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), and in violation of the FTC's "Telemarketing Sales Rule" ("TSR"), 16 C.F.R. Part 310.

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U.S. DISTRICT COURT
EASTERN DISTRICT
OF NEW YORK

SUMMARY OF THE CASE

2. Defendants are engaged in a scheme to trick consumers into providing their bank account information and other personal information. Defendants do so by falsely claiming that Defendants can speed up refund payments from FTC lawsuits that result in consumer redress.

3. Defendants place illegal robocalls (i.e., calls that play a prerecorded voice message) to consumers, spoofing the FTC's toll-free phone number as the outbound Caller ID. The illegal calls direct consumers to a website, ftcrefund.com, run by Defendants. Defendants claim on the website that consumers utilizing Defendants' services will obtain a refund from the FTC in "5 to 7 busienss [sic] days" instead of "the usual 8 to 10 weeks." In order to obtain the fictitious "refund," Defendants require consumers to enter personal information, including bank account numbers.

4. Defendants' claims are false. They cannot expedite consumer redress from the FTC, nor can they receive or process refunds on behalf of consumers. Defendants simply place illegal robocalls and then attempt to dupe consumers into providing sensitive personal and banking information.

JURISDICTION AND VENUE

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

6. Venue is proper in this district under 28 U.S.C. § 1391(b) and (c) and 15 U.S.C. § 53(b).

PLAINTIFF

7. The FTC is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58. The FTC enforces 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 also

enforces the Telemarketing Act, 15 U.S.C. §§ 6101-6108. Pursuant to the Telemarketing Act, the FTC promulgated and enforces the TSR, 16 C.F.R. Part 310, which prohibits deceptive and abusive telemarketing acts or practices.

8. The FTC is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act and the TSR and to secure such equitable relief as may be appropriate in each case, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies. 15 U.S.C. §§ 53(b), 56(a)(2)(A)-(B), 57b, 6102(c), and 6105(b).

DEFENDANTS

9. Defendant The Cuban Exchange, Inc., also d/b/a/ CrediSure America and also d/b/a MyiPad.us (“CrediSure”) is a Colorado corporation with its principal place of business in Brooklyn, New York. CrediSure transacts or has transacted business in this district and throughout the United States.

10. Defendant Suhaylee Rivera is an owner of CrediSure. At all times material to this Complaint, acting alone or in concert with others, Defendant Rivera has formulated, directed, controlled, had the authority to control, or participated in, and had knowledge of, the acts and practices set forth in this Complaint. Defendant Rivera resides in this district and, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

11. Suhaylee Rivera incorporated CrediSure in July 2012 and filed the corporate documents necessary to register “CrediSure America” and “MyiPad.us” as trade names of The Cuban Exchange, Inc. Rivera also registered the websites credisure.us and credisure.net. The credisure.net website is identical to the ftcrefund.com website. Both the credisure.us and

myipad.us websites indicate that Ms. Rivera operates CrediSure. The credisure.us website includes a picture captioned "Suhaylee Rivera – Founder." Both ftcrefund.com and credisure.net discuss the services provided by credisure.us and link to the credisure.us website.

COMMERCE

12. At all times material to this Complaint, 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' BUSINESS ACTIVITIES

13. Defendants are engaged in a scheme to solicit consumers to provide bank account information and other personal information. Defendants do so by falsely claiming that Defendants will obtain refunds allegedly due to consumers as a result of consumer protection actions brought by the FTC.

14. Defendants market their purported services by placing illegal robocalls to consumers, playing a prerecorded message alerting consumers to visit the website ftcrefund.com. During the message, a prerecorded voice states the following: "Please visit www.ftcrefund.com, www.ftcrefund.com. Your seizure ID number is 123223, again your seizure ID number is 123223. Visit right now www.ftcrefund.com. Your seizure ID number is 123223. Thank you and have a nice day." The messages use the same "seizure ID number" for all consumers.

15. The Caller ID number transmitted with the calls is 877-382-4357 (often publicized by the FTC as "877-FTC-HELP"), which is the FTC's toll-free consumer response phone number. A reasonable consumer could conclude that the call is from the FTC and is alerting them to refunds or redress due the consumer from the FTC.

16. When consumers visit ftcrefund.com (or the identical website credisure.net), they learn that:

CrediSure America is a firm specialized [sic] in corporate FTC seizures collections. But don't worry, we work for you. Yes we work for you! CrediSure America specializes in private financial forensic and investigation. Our main targets are large telemarketing and infomercial firms who get shutdown by the FTC for misrepresenting or simply defrauding customers like your self [sic]. CrediSure has the proper knowledge and open doors [sic] to expedite refunds you may not even know were owed to you. CrediSure works as a tireless collector and fiercely fights for its clients [sic] refunds to be paid first.

17. Defendants inform consumers they will receive a refund from the FTC in five to seven days, instructing consumers: "To get your refund: 1. Enter your Seizure [sic] ID (top left.). 2. Enter your depository information. 3. Wait 5 to 7 busienss [sic] days." The website promises that "Your refund will be processed within 5 to 7 business days instead of the usual 8 to 10 weeks." Defendants state that their fee is a percentage of the refund obtained from the FTC: "For only 5.55% we take care of your refund and process it in less then [sic] 7 business days as opposed to the standard 8 to 10 weeks." Defendants claim that "Over 13000 clients have received refunds through CrediSure America."

18. When consumers enter the 123223 "seizure ID number" into the seizure ID box on the website, they are directed to a page on the website that states:

SEIZURE ID: 123223
REFUND CASE: American Consumer Group, Inc.
NATURE OF REFUND: FTC Seizure - Expedited (5 to 7 business days)
AMOUNT TO BE REFUNDED: \$399.99
FEE FOR REFUND: \$22.19
TOTAL REFUND AMOUNT: \$377.80

19. All consumer victims of the scheme receive the same "seizure ID number."

20. Regardless of what "seizure ID number" is entered on the website, consumers are shown the same refund information set forth in paragraph 18.

21. The page informs consumers that, to process the supposed refund, consumers must provide their: address, phone number, bank name (including the name listed on the account), account number, ABA/Routing number, and a check number.

22. The Defendants provide consumers with a web form for contacting the company; they do not supply a phone number, email address or physical address. The website states: “We apologies [sic], due to high levels of contact requests, we only allow email contact. Please do not write to ask if you are eligible [sic] for a refund, only those who are contacted are eligible [sic]. Should we need more information from you, one of our experts will enter in [sic] contact with you. Thank you and we apologies [sic] for any inconvenience [sic].”

23. All redress from the FTC is provided directly to consumers without charge through one of four prime vendors. The FTC does not work or contract with Defendants and Defendants are not one of the four prime vendors.

24. The FTC does not direct deposit redress; the FTC mails paper checks directly to redress recipients. Moreover, the FTC does not publish the names of consumers due to receive redress from FTC consumer protection litigation. Defendants could not know the names of consumers due refunds or redress from FTC litigation.

25. In short, Defendants’ claims are false. Defendants cannot expedite consumer redress, nor can they receive or process redress on behalf of consumers. Defendants simply place illegal robocalls and attempt to dupe consumers into providing sensitive personal and banking information by lying about Defendants’ ability to obtain consumer redress from the FTC on behalf of consumers.

THE FTC ACT

26. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits “unfair or deceptive acts or practices in or affecting commerce.”

27. Misrepresentations or deceptive omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act. 15 U.S.C. § 45(a).

THE TELEMARKETING SALES RULE

28. Congress directed the FTC to prescribe rules prohibiting abusive and deceptive telemarketing acts or practices pursuant to the Telemarketing Act, 15 U.S.C. §§ 6101-6108. The FTC adopted the original Telemarketing Sales Rule in 1995, extensively amended it in 2003, and amended certain provisions thereafter. 16 C.F.R. Part 310.

29. Defendants are “seller[s]” and/or “telemarketer[s]” engaged in “telemarketing” of FTC refund services and Defendants have initiated, or have caused telemarketers to initiate, “outbound telephone call[s]” to consumers to induce the purchase of goods or services, as those terms are defined in the TSR, 16 C.F.R. § 310.2(v), (aa), (cc), and (dd).

30. The TSR prohibits sellers and telemarketers from misrepresenting, directly or by implication, in the sale of goods or services, any material aspect of the performance, efficacy, nature, or central characteristics of the goods or services that are the subject of a sales offer. 16 C.F.R. § 310.3(a)(2)(iii).

31. The TSR prohibits sellers and telemarketers from misrepresenting, directly or by implication, their affiliation with, or endorsement or sponsorship by, any government or third-party organization. 16 C.F.R. § 310.3(a)(2)(vii).

32. The TSR, as amended in 2003, established a “do-not-call” registry (the “National Do Not Call Registry” or “Registry”), maintained by the FTC, of consumers who do not wish to receive certain types of telemarketing calls. Consumers can register their telephone numbers on

the Registry without charge either through a toll-free telephone call or over the Internet at www.donotcall.gov.

33. Consumers who receive telemarketing calls to their registered numbers can complain of Registry violations the same way they registered, through a toll-free telephone call or over the Internet at www.donotcall.gov, or by otherwise contacting law enforcement authorities.

34. The FTC allows sellers, telemarketers, and other permitted organizations to access the Registry over the Internet at www.telemarketing.donotcall.gov, to pay any required fee(s), and to download the numbers not to call.

35. The TSR prohibits sellers and telemarketers from calling any telephone number within a given area code unless the seller on whose behalf the call is made has paid the annual fee for access to the telephone numbers within that area code that are included in the Registry. 16 C.F.R. § 310.8.

36. The TSR prohibits sellers and telemarketers from initiating an outbound telephone call to telephone numbers on the Registry. 16 C.F.R. § 310.4(b)(1)(iii)(B).

37. The TSR requires that sellers and telemarketers transmit or cause to be transmitted the telephone number and, when made available by the telemarketer's carrier, the name of the telemarketer, to any caller identification service in use by a recipient of a telemarketing call, or transmit the customer service number of the seller on whose behalf the call is made and, when made available by the telemarketer's seller, the name of the seller. 16 C.F.R. § 310.4(a)(8).

38. The TSR requires telemarketers in an outbound telephone call to disclose truthfully, promptly, and in a clear and conspicuous manner, the following information:

- A. The identity of the seller;
- B. That the purpose of the call is to sell goods or services; and
- C. The nature of the goods or services.

16 C.F.R. § 310.4(d).

39. As amended, effective September 1, 2009, the TSR prohibits initiating a telephone call that delivers a prerecorded message to induce the purchase of any good or service unless the seller has obtained from the recipient of the call an express agreement, in writing, that evidences the willingness of the recipient of the call to receive calls that deliver prerecorded messages by or on behalf of a specific seller. The express agreement must include the recipient's telephone number and signature, must be obtained after a clear and conspicuous disclosure that the purpose of the agreement is to authorize the seller to place prerecorded calls to such person, and must be obtained after a clear and conspicuous disclosure that the purpose of the agreement is to authorize the seller to place prerecorded calls to such person, and must be obtained without requiring, directly or indirectly, that the agreement be executed as a condition of purchasing any good or service. 16 C.F.R. § 310.4(b)(1)(v)(A).

40. 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), a violation of the TSR constitutes an unfair or deceptive act or practice in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT ONE

Misrepresentations in Violation of Section 5(a) (15 U.S.C. § 45(a))

41. In numerous instances, in connection with the advertising, marketing, promotion, offering for sale, or sale of Defendants' FTC refund services, Defendants have represented, directly or indirectly, expressly or by implication, that:

- A. Defendants are affiliated with or endorsed by the FTC;
- B. Defendants can obtain refunds/redress from the FTC on behalf of consumers;
- C. Defendants can reduce FTC refund/redress wait times to 5 to 7 business days from 8 to 10 weeks;
- D. Defendants know that the consumer is entitled to a refund or redress from the FTC; and
- E. Defendants have assisted more than 13,000 clients in receiving refunds/redress from the FTC.

42. In truth and in fact, the representations set forth in Paragraph 41 of this Complaint were false at the time the representations were made.

43. Therefore, Defendants' representations as set forth in Paragraph 41 of this Complaint 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 TWO

Misrepresentations of Affiliation With, or Endorsement or Sponsorship by, Any Person or Government Entity in Violation of the TSR (16 C.F.R. § 310.3(a)(2)(vii))

44. In numerous instances, in connection with the telemarketing of good and services, Defendants have misrepresented, directly or by implication, their affiliation with, or endorsement or sponsorship by, the FTC in violation of the TSR, 16 C.F.R. § 310.3(a)(2)(vii).

COUNT THREE

Misrepresentations of Material Aspects of Performance of Goods and Services in Violation of the TSR (16 C.F.R. § 310.3(a)(2)(iii))

45. In numerous instances, in connection with the telemarketing of goods and services, Defendants have misrepresented, directly or by implication, material aspects of the

performance, efficacy, nature, or central characteristics of such goods and services, including, but not limited to, that:

- A. Defendants can obtain refunds/redress from the FTC on behalf of consumers;
- B. Defendants can reduce FTC refund/redress wait times to 5 to 7 business days from 8 to 10 weeks;
- C. Defendants know that the consumer is entitled to a refund or redress from the FTC; and
- D. Defendants have assisted more than 13,000 clients in receiving refunds/redress from the FTC.

46. Defendants' acts and practices, as described in Paragraph 45 above, are deceptive telemarketing acts or practices that violate the TSR, 16 C.F.R. § 310.3(a)(2)(iii).

COUNT FOUR

Violating the National Do Not Call Registry (16 C.F.R. § 310.4(b)(1)(iii)(B))

47. In numerous instances, in connection with telemarketing, Defendants have engaged, or caused a telemarketer to engage, in initiating an outbound telephone call to a person's telephone number on the National Do Not Call Registry in violation of the TSR, 16 C.F.R. § 310.4(b)(1)(iii)(B).

COUNT FIVE

Failing to Transmit Caller Identification (16 C.F.R. § 310.4(a)(8))

48. In numerous instances, in connection with telemarketing, Defendants have failed to transmit, or have caused telemarketers to fail to transmit, the telephone number and name of the telemarketer or of Defendants to any caller identification service in use by a recipient of a telemarketing call, in violation of the TSR, 16 C.F.R. § 310.4(a)(8).

COUNT SIX

Initiating Unlawful Prerecorded Messages (16 C.F.R. § 310.4(b)(1)(v))

49. In numerous instances Defendants have made, or caused others to make, outbound telephone calls that delivered prerecorded messages to induce the purchase of goods or services in violation of the TSR, 16 C.F.R. § 310.4(b)(1)(v).

COUNT SEVEN

Failing to Make Required Oral Disclosures (16 C.F.R. § 310.4(d))

50. In numerous instances in the course of telemarketing goods and services, Defendants have made, or caused others to make, outbound telephone calls that deliver a prerecorded message in which the telemarketer or message failed to disclose truthfully, promptly, and in a clear and conspicuous manner to the person receiving the call:

- A. The identity of the seller;
- B. That the purpose of the call is to sell goods or services; or
- C. The nature of the goods or services.

51. Defendants' acts and practices, as alleged in Paragraph 50 above, are abusive telemarketing acts or practices that violate the TSR, 16 C.F.R. § 310.4(d).

COUNT EIGHT

Failing to Pay National Registry Fees (16 C.F.R. § 310.8)

52. In numerous instances, in connection with telemarketing, Defendants have initiated, or caused others to initiate, an outbound telephone call to a telephone number within a given area code when Defendants had not, either directly or through another person, paid the required annual fee for access to the telephone numbers within that area code that are included in the National Do Not Call Registry, in violation of the TSR, 16 C.F.R. § 310.8.

CONSUMER INJURY

53. Consumers likely have suffered and will likely continue to suffer substantial injury as a result of Defendants' violations of the FTC Act and the TSR. In addition, Defendants have likely been unjustly enriched as a result of their unlawful acts or practices. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

54. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and such other relief as the Court may deem appropriate to halt and redress violations of any provision of law enforced by the FTC. The Court, in the exercise of its equitable jurisdiction, may award ancillary relief, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies, to prevent and remedy any violation of any provision of law enforced by the FTC.

55. 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 this Court to grant such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the TSR, including the rescission or reformation of contracts, and the refund of money.

PRAYER FOR RELIEF

Wherefore, Plaintiff FTC, pursuant to Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, and Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b), and the Court's own equitable powers, requests that the Court:

A. Award Plaintiff 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;

B. Enter a permanent injunction to prevent future violations of the FTC Act and the TSR by Defendants;

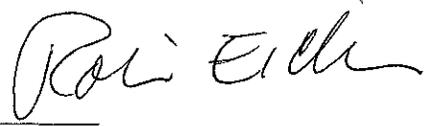
C. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act and the TSR, including but not limited to, rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies; and

D. 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,

DAVID SHONKA
Acting General Counsel

Dated: November 28, 2012

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