UNITED STATES DISTRICT COURT CIV-MARRA
FOR THE SOUTHERN DISTRICT OF FLORIDA
Case No. 03-80050 CV

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MAGISTRATE JUDGE SELTZER

FEDERAL TRADE COMMISSION,	)
Plaintiff,	)
v.	)
800 CONNECT, INC.;	)
DAVID STEIN, individually and as an officer of 800 Connect, Inc.;	)
ILD TELECOMMUNICATIONS, INC., and d/b/a ILD TELESERVICES, INC.	)
Defendants.	)

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 Telephone Disclosure and Dispute Resolution Act of 1992 ("TDDRA"), 15 U.S.C. § 5701 *et seq.*, to obtain a permanent injunctive relief, restitution, disgorgement, and other equitable relief for defendants' violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the FTC's Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992, 16 C.F.R. Part 308 (the "Pay-Per-Call Rule").

JURISDICTION AND VENUE

2. Subject matter jurisdiction is conferred upon this Court by 15 U.S.C. §§ 45(a), 53(b), 57b, and 28 U.S.C. §§ 1331, 1337(a), and 1345.

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

THE PARTIES

4. 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 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 its Pay-Per-Call Rule, 16 C.F.R. Part 308, which, *inter alia*, regulates the advertising, operation, billing, and collection of information and entertainment services accessed through 900 and toll-free telephone numbers. The Commission may initiate federal district court proceedings to enjoin violations of the FTC Act, and the Pay-Per-Call Rule, to secure such equitable relief as is appropriate in each case, including restitution for injured consumers. 15 U.S.C. §§ 53(b), 57b, and 5711(c).

5. Defendant 800 Connect, Inc. ("800 Connect") is a Florida Corporation having its office and principal place of business at 5770 Carriage Drive, Sarasota, Florida. At all times material to this Complaint, 800 Connect has transacted business throughout the United States and in this district.

6. Defendant David Stein is President of 800 Connect. 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 800 Connect set forth in this Complaint. At all times

material to this Complaint, Stein has transacted business throughout the United States and in this district.

7. Defendant ILD Telecommunications, Inc. ("ILD") is a Delaware Corporation having offices at 16200 Addison Rd., Suite 100, Addison, Texas; 2600 Cumberland Parkway, Suite 200, Atlanta, Georgia; 13000 Sawgrass Village Circle, Suite 41, Ponte Vedra Beach, Florida; and 5213 33rd Avenue, Fort Lauderdale, Florida. At all times material to this Complaint, ILD Telecommunications has transacted business throughout the United States and in this district.

COMMERCE

8. At all times material to this Complaint, defendants' course of business, including the acts and practices alleged herein, has been and is in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFINITIONS

9. For purposes of this Complaint, "Local Exchange Carrier" or "LEC" means the local telephone company from which a line subscriber receives his or her telephone bill.

10. For the purpose of this Complaint, "line subscriber" means an individual or entity who has arranged with a LEC to obtain local telephone service provided through an assigned telephone number, and to be billed for such service on a monthly (or other periodic) basis.

11. For the purpose of this Complaint, "billing aggregator" means an entity that, on behalf of one or more service vendors, arranges to have charges for vendors' services placed on the telephone bills sent to line subscribers from their LECs, arranges for the LECs to collect

those charges from line subscribers, and arranges for service vendors to receive payment for their services.

12. For the purpose of this Complaint, "vendor" means an entity that offers information or entertainment services, charges for which appear on the telephone bills received by line subscribers from their LECs.

13. For purposes of this Complaint, the "Pay-Per-Call Rule" means the FTC's Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992, 16 C.F.R. Part 308.

14. For the purposes of this Complaint, the "800 Connect Defendants" include defendant 800 Connect, Inc. and defendant David Stein.

15. For the purposes of this Complaint, "presubscription or comparable arrangement" has the meaning provided for it in section 308.2(e) of the Pay-Per-Call Rule, 16 C.F.R. 308.2(e).

DEFENDANTS' BUSINESS PRACTICES

16. The 800 Connect Defendants charged line subscribers for information services provided over 800, 888, 877 or other telephone lines widely understood to be toll-free.

17. Defendant David Stein is the sole owner and President of 800 Connect. He runs the day-to-day business of 800 Connect and exercises authority and control over 800 Connect.

18. Defendant ILD is a billing aggregator. ILD arranges to have the charges for services of its clients, including 800 Connect, placed on line subscribers' telephone bills. ILD contracts with LECs such as Southern New England Telephone, Verizon, Bell Atlantic and Ameritech – the local telephone companies from which line subscribers receive their telephone

service and billing -- to place the charges for ILD's clients' services on line subscribers' telephone bills.

19. Callers generally reached 800 Connect's information services by mistake. When a caller misdialed one of a number of toll-free numbers, including the toll-free numbers for Experian, Federal Express or Sovereign Bank, she reached an 800 Connect line.

20. When a consumer reached one of 800 Connect's 800, 888, 877, or other numbers widely understood to be toll-free, 800 Connect, through a prerecorded message, informed the caller that she had misdialed, and would be given the opportunity to receive the correct number.

21. The caller would be given the option to "press 1, now" for the correct information.

22. If the caller pressed "1" for the correct information, she was then provided the number with no disclosure that 800 Connect, usually through ILD, would be billing the line subscriber of the telephone used to access the information as much as $2.99 for the information provided.

23. If the caller continued to listen to the Connect message after being given the initial opportunity to press "1"for the correct information, the message eventually told her that if she pressed 1, or held the line for the correct telephone number, she would be charged a certain amount, ranging from $1.99 to $2.99, for receiving the correct phone number. She was then given the opportunity to hang up, allegedly before charges were incurred.

24. If the caller received the information, either by pressing "1" or by holding the line until the information was provided, regardless of who used the phone to make the call and get the information, the line subscriber of the phone that was used received a phone bill containing a

charge for each time that her phone was used to call an 800 Connect information line and receive information about another company's toll-free telephone number.

25. Charges for 800 Connect's services generally appeared on a line subscriber's phone bill on a separate page titled "ILD Teleservices, Inc." that the LECs inserted into the line subscriber's telephone bill. A toll-free number for billing inquiries was listed on the ILD bill page.

26. 800 Connect identified the phone numbers to be billed for its services through "automatic number identification" (ANI) which 800 Connect captured when it received a call to its toll-free number.

27. ANI identifies the *telephone number* from which the call to 800 Connect's 800, 888, 877 or other number widely understood to be toll-free originates. ANI cannot identify the *caller,* and cannot determine whether a caller is the line subscriber for the line from which the call originates.

28. 800 Connect forwarded its billing information to ILD, and ILD, in turn, forwarded that billing information to the LECs. The LEC's then placed 800 Connect/ILD charges on consumers' telephone bills.

29. In numerous instances, 800 Connect, using ILD as its billing aggregator, billed line subscribers between $1.99 and $2.99 for the provision of information services over 800, 888, 877 or other numbers widely understood to be toll-free.

30. Many line subscribers who received these bills did not know what they were being billed for. In numerous instances, neither the line subscriber nor anyone in the line subscriber's household had ever heard of 800 Connect or ILD.

31. Line subscribers who noticed the 800 Connect/ILD charges on their bills were generally surprised to find these unexpected charges on their phone bills.

32. As a general matter, when a line subscriber or the line subscriber's representative (usually a spouse) called ILD to inquire about a charge, ILD representatives explained that the line subscriber was being charged for misdialing an 800, 888, 877 or other number widely understood to be toll-free, and receiving the correct telephone number from 800 Connect.

33. In numerous instances line subscribers have complained to ILD that they did not purchase or did not receive, 800 Connect's services, did not know that they would be charged for 800 Connect's services, or did not think they could be charged for a call to a number they understood to be toll-free.

34. In numerous instances, ILD representatives failed to credit line subscribers' accounts for disputed charges. Instead, they told consumers that they were obligated to pay charges incurred on their phone lines.

THE PAY-PER-CALL RULE

35. The Commission's Pay-Per-Call Rule, 16 C.F.R. Part 308, became effective on November 1, 1993, and implements the requirements of the TDDRA, 15 U.S.C. § 5701 *et seq.* (the "Pay-Per-Call Rule"). The Pay-Per-Call Rule prohibits, *inter alia,* any person from using an 800 or other telephone number widely understood to be toll-free in a manner that would result in a charge to the calling party for information conveyed during the call unless the calling party has a presubscription or comparable arrangement to be charged for the information. 16 C.F.R. § 308.5(i)(3).

36. At all times relevant to this Complaint, the acts and practices of the 800 Connect Defendants, as alleged herein, have included the use of 800 or other telephone numbers widely understood to be toll-free to provide and charge for information services for which they have not entered into presubscription or comparable arrangements with the calling parties.

37. Section 308.7(a)(2)(iv) of the Pay-Per-Call Rule identifies as a billing error "a reflection on a billing statement of a telephone-billed purchase for a call made to an 800 or other toll-free telephone number."

38. Section 308.7(a)(6) of the Pay-Per-Call Rule defines a "telephone-billed purchase" as "any purchase that is completed solely as the consequence of the completion of the call or a subsequent dialing, touch tone entry, or comparable action of the caller." The definition includes some exceptions that are not applicable in this case.

39. The transactions whereby line subscribers are charged for 800 Connect's information services are "telephone-billed purchases" within the meaning of the Pay-Per-Call Rule.

40. Section 308.7(a)(1) of the Pay-Per-Call Rule defines a billing entity as "any person who transmits a billing statement to a customer for a telephone-billed purchase, or any person who assumes responsibility for receiving and responding to billing error complaints or inquiries."

41. At all times relevant to this Complaint, the acts and practices of ILD, as alleged herein, have included transmitting billing statements for telephone-billed purchases, and taking responsibility for receiving and responding to billing error complaints or inquiries. Therefore,

with respect to the services at issue in this matter, ILD is a "billing entity" within the meaning of the Rule.

42. Section 308.7(d) of the Pay-Per-Call Rule requires a billing entity to take certain actions when notified of a billing error by a customer including sending a written acknowledgment to the customer of the dispute, conducting a reasonable investigation, correcting the billing error and crediting the customer's account.

43. In numerous instances, as alleged herein, ILD has failed to comply with the dispute resolution requirements of the Pay-Per-Call Rule.

DEFENDANTS' VIOLATIONS OF THE PAY-PER-CALL RULE

COUNT I
(800 CONNECT DEFENDANTS)

44. Section 308.5(i) of the Pay-Per-Call Rule prohibits using an 800 or other telephone number advertised as or widely understood to be toll-free in a manner that would result in the calling party being charged for information conveyed during the call, absent the existence of a presubscription or comparable arrangement with the calling party.

45. In numerous instances, the 800 Connect Defendants have used 800 or other telephone numbers advertised as or widely understood to be toll-free in a manner that results in the calling party being charged for information conveyed during the calls to such numbers, without having a presubscription or comparable agreement with the calling party.

46. Therefore, the 800 Connect Defendants, as alleged above, have violated the Pay-Per-Call Rule, 16 C.F.R. § 308.5(i).

COUNT II
(ILD)

47. Section 308.7(a)(iv) of the Pay-Per-Call Rule identifies as a billing error "a reflection on a billing statement of a telephone-billed purchase for a call made to an 800 or other toll-free telephone number."

48. Section 308.7(d) requires a billing entity to take certain actions when notified of a billing error by a customer, including sending a written acknowledgment to the customer of the dispute, conducting a reasonable investigation into the dispute, correcting the billing error and crediting the customer's account.

49. In numerous instances, defendant ILD, acting as a billing entity, has received billing error notices from line subscribers about charges for 800 Connect's services and has failed to comply with the dispute resolution requirements of Section 308.7(d) of the Pay-Per-Call Rule.

50. Therefore, ILD, as alleged above, has violated the Pay-Per-Call Rule, 16 C.F.R. § 308.7.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

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

COUNT III
(ALL DEFENDANTS)

52. In numerous instances, Defendants have represented, expressly or by implication, that because a line subscriber's telephone was used to call an 800, 888, 877 or other telephone numbers widely understood to be toll-free and subsequently to receive information services, the line subscriber is legally obligated to pay Defendants for such services.

53. In truth and in fact, in numerous instances, the line subscriber is not legally obligated to pay Defendants for information services provided over an 800, 888, 877 or other telephone line widely understood to be toll-free.

54. Therefore, the representations of the Defendants, alleged above, are false and deceptive, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT IV
(ALL DEFENDANTS)

55. In numerous instances, based on the use of a line subscriber's telephone to call one of 800 Connect's 800, 888, 877 or other telephone numbers widely understood to be toll-free and to receive 800 Connect's information services, Defendants, directly or through an intermediary, have billed, attempted to collect, and collected charges from line subscribers.

56. A line subscriber cannot reasonably avoid Defendants' billing and collection efforts for information services accessed or received on the line subscriber's line, because a line subscriber cannot reasonably anticipate or prevent charges incurred through use of his or her telephone line to 800, 888, 877 or other telephone numbers widely understood to be toll-free.

57. Defendants' practice of billing, attempting to collect, and collecting charges for 800 Connect's information services provided over 800, 888, 877 or other telephone numbers widely understood to be toll-free without authorization from the line subscriber has caused substantial injury to consumers that is not outweighed by countervailing benefits to consumers or competition.

58. Therefore, Defendants' practices, as alleged above, are unfair and violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

CONSUMER INJURY

59. Consumers throughout the United States have suffered and continue to suffer substantial monetary loss as a result of Defendants' unlawful acts or practices. In addition, defendants have been unjustly enriched as a result of their unlawful practices.

THIS COURT'S POWER TO GRANT RELIEF

60. 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.

61. Section 19 of the FTC Act, 15 U.S.C. § 57b, and Section 5711 of TDDRA, 15 U.S.C. § 5711, authorize this Court to grant such relief as the Court finds necessary to redress injury to consumers or other persons resulting from defendants' violations of the Pay-Per-Call Rule, including the refund of money.

PRAYER FOR RELIEF

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

1. Permanently enjoin Defendants from violating the FTC Act, and the Pay-Per-Call Rule, as alleged herein;
2. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act, and the Pay-Per-Call Rule, including, but not limited to, the refund of monies paid, and the disgorgement of ill-gotten monies; and

3. 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,

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