

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

VISION QUEST, LLC, and

BRIAN K. CAVETT, individually
and as a member of VISION
QUEST, LLC,

Defendants.

Case No.:

**COMPLAINT FOR CIVIL PENALTIES, PERMANENT INJUNCTION
AND OTHER EQUITABLE RELIEF**

Plaintiff, the United States of America, acting upon notification and authorization to the Attorney General by the Federal Trade Commission ("FTC" or "Commission"), pursuant to Section 16(a)(1) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 56(a)(1), alleges:

1. Plaintiff, the United States of America, brings this action under Sections 5(a), 5(m)(1)(A), 13(b), 16(a) and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b), 56(a) and 57b, and Section 6 of the Telemarketing and Consumer Fraud and Abuse Prevention Act (the "Telemarketing Act"), 15 U.S.C. § 6105, to obtain monetary civil penalties, a permanent injunction, and other equitable relief against Defendants for violations of

Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the FTC's Telemarketing Sales Rule (the "TSR" or "Rule"), 16 C.F.R. Part 310, as amended by 68 Fed. Reg. 4580, 4669 (January 29, 2003).

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355, and 15 U.S.C. §§ 45(m)(1)(A), 53(b), 56(a) and 57b. This action arises under 15 U.S.C. § 45(a).

3. Venue is proper in this District under 28 U.S.C. §§ 1391 (b)-(c) and 1395(a), and 15 U.S.C. § 53(b).

DEFENDANTS

4. Defendant Vision Quest, LLC ("Vision Quest") is a Michigan limited liability company with its principal place of business at 4427 Richfield Rd., Flint, Michigan 48506.

5. Defendant Brian K. Cavett is a member of Vision Quest. Acting alone or in concert with others, he has formulated, directed, controlled or participated in the acts or practices set forth in this complaint.

**THE TELEMARKETING SALES RULE
AND THE NATIONAL DO NOT CALL REGISTRY**

6. 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, in 1994. On August 16, 1995, the FTC adopted the Telemarketing Sales Rule

(the "Original TSR"), 16 C.F.R. Part 310, which became effective on December 31, 1995. On January 29, 2003, the FTC amended the TSR by issuing a Statement of Basis and Purpose ("SBP") and the final amended TSR (the "Amended TSR"). 68 Fed. Reg. 4580, 4669.

7. Among other things, the Amended TSR established a "do not call" registry, maintained by the Commission (the "National Do Not Call Registry" or "Registry"), 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.

8. 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, or by otherwise contacting law enforcement authorities.

9. A "seller" is any person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration. 16 C.F.R. § 310.2(z).

10. A "telemarketer" is any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer or donor. 16 C.F.R. § 310.2(bb).

11. Since October 17, 2003, sellers and telemarketers have been prohibited from calling numbers on the Registry in violation of the Amended TSR. 16 C.F.R. § 310.4(b)(1)(iii)(B).

12. Since September 2, 2003, sellers, telemarketers, and other permitted organizations have been able to access the Registry over the Internet at telemarketing.donotcall.gov to download the registered numbers.

13. 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 Amended 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).

14. Defendants are "seller[s]" and/or "telemarketer[s]" engaged in "telemarketing," as defined by the Amended TSR, 16 C.F.R. § 310.2.

DEFENDANTS' BUSINESS ACTIVITIES

15. Defendant Vision Quest is a telemarketer of Dish Network satellite television programming for DISH Network L.L.C. ("DISH Network"). DISH Network is a seller of Dish Network satellite television programming to consumers throughout the United States.

16. Since on or about October 1, 2003, Vision Quest has engaged in telemarketing on behalf of DISH Network.

17. Since on or about October 17, 2003, Defendant Vision Quest, acting on behalf of DISH Network, has directly, or through

intermediaries, placed outbound calls to telephone numbers on the National Do Not Call Registry.

18. Defendants have engaged in telemarketing by a plan, program, or campaign conducted to induce the purchase of goods or services by use of one or more telephones and which involves more than one interstate call.

19. At all times relevant to this complaint Defendants have maintained a substantial course of trade or business in the offering for sale and sale of goods or services via the telephone in or affecting commerce as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

COUNT ONE

VIOLATION OF THE TELEMARKETING SALES RULE

20. In numerous instances, in connection with telemarketing, Defendants engaged in 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).

CONSUMER INJURY

21. Consumers in the United States have suffered and will suffer injury as a result of Defendants' violations of the TSR. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

22. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and other ancillary relief to prevent and remedy any violation of any provision of law enforced by the FTC.

23. Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A), as modified by Section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended, and as implemented by 16 C.F.R. § 1.98(d) (2007), authorizes this Court to award monetary civil penalties of not more than \$11,000 for each violation of the TSR. Defendants' violations of the TSR were committed with the knowledge required by Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A).

24. This Court, in the exercise of its equitable jurisdiction, may award ancillary relief to remedy injury caused by Defendants' violations of the Rule and the FTC Act.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff request that this Court, as authorized by Sections 5(a), 5(m)(1)(A), 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b) and 57b, and pursuant to its own equitable powers:

1. Enter judgment against Defendants and in favor of Plaintiff for each violation alleged in this complaint;

2. Award Plaintiff monetary civil penalties from Defendants for every violation of the TSR;
3. Enter a permanent injunction to prevent future violations of the TSR and the FTC Act by Defendants;
4. Order Defendants to pay the costs of this action; and
5. Award Plaintiff such other and additional relief as the Court may determine to be just and proper.

FOR THE UNITED STATES OF
AMERICA:

Dated: March 25, 2009

MICHAEL F. HERTZ
Acting Assistant Attorney
General

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