

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA**

FEDERAL TRADE COMMISSION,

Plaintiff

v.

**EPIC RESORTS, LLC
A Delaware Company,**

**EPIC TRAVEL, LLC
A Delaware Company,**

THOMAS FLATLEY,

and

SCOTT EGELKAMP,

Defendants.

Civ.

Case No.

Magistrate

**COMPLAINT FOR
PERMANENT INJUNCTION,
CONSUMER REDRESS, 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 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.

JURISDICTION AND VENUE

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

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

PLAINTIFF

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 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).

DEFENDANTS

5. Defendant Epic Resorts, LLC, is a Delaware limited liability company. Epic Resorts transacts or has transacted business in the Middle District of Florida.

6. Defendant Epic Travel, LLC, is a Delaware limited liability company. Epic Travel transacts or has transacted business in the Middle District of Florida.

7. Defendant Thomas Flatley is an officer of Epic Resorts and Epic Travel. 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 alleged in this complaint. He transacts or has transacted business in the Middle District of Florida.

8. Defendant Scott Egelkamp is an officer of Epic Resorts and Epic Travel. 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 alleged in this complaint. He transacts or has transacted business in the Middle District of Florida.

9. Since at least 1998, Epic Resorts and Epic Travel acted as a common business enterprise nationwide to promote, offer to sell, and sell vacation travel packages.

COMMERCE

10. At all times relevant 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' COURSE OF CONDUCT

11. Since at least 1998, defendants have engaged in a common course of conduct to deceive consumers throughout the United States by deceptively marketing and selling vacation travel packages for the purpose of selling interests in timeshare properties. The corporate defendants, by operating a common business enterprise with shared officers, employees, and offices, act together with the individual defendants to sell their vacation travel packages and ultimately their timeshares.

12. Defendants operate their scheme through a network of telemarketing boilerrooms in Florida and elsewhere. Defendants enter into contracts with "third-party," telemarketers, who

sell defendants' vacation travel packages. The contractual relationship gives defendants control over the third-party telemarketers. In addition, defendants provide the telemarketers the names and telephone numbers of consumers to solicit; create or approve the sales and verification scripts the telemarketers use; process credit card sales made by the telemarketers; answer consumers' questions; respond to inquiries from consumer organizations and regulatory officials; maintain a centralized database on all consumers who purchase defendants' vacation packages; mail vacation packages with reservation forms to consumers who purchase defendants' packages; and make reservations for customers who have paid the required amounts for their accommodations and cruise.

13. Defendants' telemarketers make their initial contact with consumers in several ways. Defendants and their telemarketers send unsolicited email messages about their vacations; they also send unsolicited faxes addressed to "all employees" or "corporate employees" advertising vacations at resorts in Florida and elsewhere, and often a cruise to the Bahamas. Recipients respond by calling a toll-free number, where they reach one of defendants' telemarketers. In other instances, defendants invite consumers to fill out a registration form at a public event to win a free trip to Florida and the Bahamas. Defendants represent that consumers may win a valuable vacation travel package prize. Defendants' telemarketers then contact consumers by telephone and advise them they have won a vacation travel package. Defendants also advertise on the Internet by posting banner ads on various sites to "win a free vacation." Consumers who click on the banner ad complete a registration form and are eventually called by one of defendants' telemarketers.

14. Regardless of the initial method of contact, consumers end up talking with one of defendants' telemarketers, who congratulates them on winning a free vacation trip. In excited

tones, the telemarketer gives a glowing description of the various components of defendants' vacation travel packages. Although the specifics of the packages vary, they typically include a number of nights' lodging at vacation destinations such as Florida, with a cruise to the Bahamas. The vacations often include as a "bonus," the following: free passes to tourist attractions, dinners, and casino cruises; a booklet of discount coupons supposedly worth \$500; and a mini-vacation at another Epic resort. Defendants' telemarketers assure consumers the vacation is worth hundreds of dollars and that consumers are saving 70% on the vacation.

15. After generating sufficient enthusiasm in consumers, defendants' telemarketers then inform them that there is a charge to "reserve," "secure," or "register" for the vacation. The charge depends on the components of the vacation package, but can be as high as \$698. In some instances, defendants' may refer to unspecified incidental port and service fees that must be paid at the time reservations are made if the consumer chooses to take a cruise to the Bahamas. The Epic telemarketers insist there are a limited number of vacations and that consumers must purchase the vacation immediately. In fact, the vacations are not in short supply.

16. Consumers divulge their credit card or bank account numbers in response to the telemarketer's representation that this is necessary to "register," "secure," or "reserve" the vacation. Defendants then charge the price of the vacation package to consumers' credit cards or bank accounts. Consumers who try to cancel their purchase during the verification process that immediately follows the sales pitch are told it is too late and they cannot cancel.

17. Defendants send a confirmation package to consumers who have signed up for one of defendants' vacations. The package contains a "Welcome Letter," a short video, printed Terms and Conditions, some advertisements, and reservation request forms. When consumers read the Welcome Letter or the Terms and Conditions, or when they begin to schedule their

vacations, they learn for the first time of previously undisclosed expenses they will have to pay, and other material terms and conditions they must meet in order to use the vacation package.

18. Consumers who still want to travel after they have reviewed the confirmation package send their reservation forms and any additional payment to defendants. Consumers who decide they do not want to use the vacation, return the confirmation package to defendants in order to comply with defendants' 30-day full refund policy. Many consumers who return the package within 30 days find that defendants delay for months providing refunds to consumers. In some instances, consumers do not receive their refund unless they complain to the Better Business Bureau or a State Attorney General. In other instances, defendants tell consumers that defendants cannot provide the refund until they sell additional vacation packages to other consumers.

19. Those who travel may learn, when they arrive at defendants' vacation destinations, of undisclosed expenses they must pay, such as hotel taxes and ground transportation, or material terms and conditions they must meet in order to receive their paid-for cruise tickets or promised free meal tickets, such as the requirement to attend a timeshare sales presentation. Other consumers who arrive at defendants' vacation destinations learn that they are too young or do not have the required income to obtain the discount coupons, stay at certain promised hotels, or get the promised free rental car.

20. In some instances, consumers who are initially called by defendants' telemarketers and decide not to purchase the vacation package, request that defendants to stop telephoning them. Notwithstanding this request, defendants' telemarketers repeatedly telephone consumers who have asked not to be called.

THE FEDERAL TRADE COMMISSION ACT

21. 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.”

VIOLATIONS OF SECTION 5 OF THE FTC ACT

COUNT I

22. In numerous instances since at least 1998, in connection with the advertising, marketing, promoting, 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 travel package.

23. In truth and in fact, consumers have neither won nor been specially selected to receive a vacation travel package. The package is available to consumers only if they pay various fees and costs to defendants.

24. Therefore, defendants’ representation in Paragraph 22 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

25. In numerous instances since at least 1998, in connection with the advertising, marketing, promoting, offering for sale, or sale of vacation travel packages, defendants have failed to disclose in a clear and conspicuous manner, material facts including the conditions and restrictions to purchase, receive or use the vacation travel packages offered by the defendants.

26. Defendants’ failure to disclose material facts set forth in Paragraph 25 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 III

27. In numerous instances since at least 1998, in connection with the advertising, marketing, promoting, offering for sale, or sale of vacation travel packages, defendants have represented, expressly or by implication, that the price quoted to consumers in their initial sales pitch is the total cost to purchase, receive or use the vacation travel package offered by defendants.

28. In truth and in fact, in numerous instances, the price quoted to consumers in the initial sales pitch is not the total cost to purchase, receive or use the vacation travel package offered by defendants.

29. Therefore, defendants' representation in Paragraph 27 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

30. 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.

31. 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).

32. 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 subject of the sales offer." 16 C.F.R. § 310.3(a)(1)(i).

33. 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, . . . all 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).

34. The Telemarketing Sales Rule 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).

35. The Telemarketing Sales Rule also prohibits sellers and telemarketers from initiating an outbound telephone call to any person when that person previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the seller whose goods or services are being offered. 16 C.F.R. § 310.4(b)(ii).

36. 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 IV

37. In numerous instances, in connection with the advertising, marketing, promoting, 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 travel packages, the total costs to

purchase, receive, or use the vacation travel package that are the subject of the sales offer, including, but not limited to, the amount of port and service fees, the amount of required taxes, and any surcharge imposed on travel in certain periods. 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

38. In numerous instances, in connection with the advertising, marketing, promoting, 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 travel 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 sales presentation for timeshare vacation property, that consumers must be a certain age to stay in certain of the accommodations, and that consumers must be above a certain income level in order to receive the bonus parts of the vacation travel package. 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 VI

39. In numerous instances, in connection with the advertising, marketing, promoting, offering for sale, or sale of vacation travel packages, defendants have misrepresented, expressly or by implication, material aspects of a prize promotion including, but not limited to, that consumers have won or been specially selected to receive vacation travel packages when in fact consumers have not won or been specially selected to receive such packages. 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 VII

40. In numerous instances, in connection with the advertising, marketing, promoting, offering for sale, or sale of vacation travel packages, defendants have continued to initiate outbound calls to persons who have stated that they do not wish to receive an outbound telephone call made by or on behalf of defendants. Defendants have thereby violated Section 310.4(b)(ii) of the Telemarketing Sales Rule, 16 C.F.R. § 310.4(b)(ii).

CONSUMER INJURY

41. Consumers throughout the United States 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

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

43. 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.

PRAYER FOR RELIEF

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

1. 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; appointment of a receiver, and an order freezing assets;

2. Permanently enjoin 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 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 Plaintiff the costs of bringing this action, as well as such other additional relief as the Court may determine to be just and proper.

Respectfully Submitted,

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