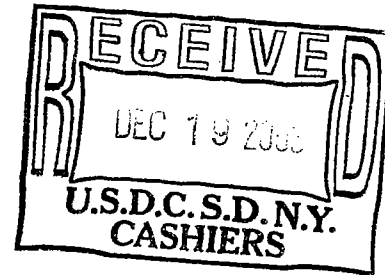


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**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

03 CV 10075

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

**DOMAIN REGISTRY OF AMERICA,
INC.**

Defendant.

Civil Action No.

**COMPLAINT FOR
PERMANENT
INJUNCTION AND
OTHER EQUITABLE
RELIEF**

Plaintiff, the Federal Trade Commission ("FTC" or "the Commission"), for its complaint alleges as follows:

1. The Commission brings this action under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and the Truth In Lending Act ("TILA"), 15 U.S.C. §§ 1601 *et seq.*, to secure permanent injunctive relief, rescission of contracts, restitution, redress, and other equitable relief against the defendant for engaging in deceptive and unfair acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and Section 226.12(e) of Regulation Z, 12 C.F.R. § 226.12(e), which implements the TILA.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a), 53(b), and 1607(c).

3. Venue in the United States District Court for the Southern District of New York is proper under 28 U.S.C. §§ 1391 (c) and (d), and 15 U.S.C. §§ 53(b) and 1607(c).

PLAINTIFF

4. Plaintiff FTC 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 TILA and its implementing Regulation Z. A violation of the TILA is a violation of the FTC Act. 15 U.S.C. § 1607(c). The Commission is authorized to initiate federal district court proceedings by its own attorneys to enjoin violations of the FTC Act and the TILA, to secure such equitable relief as may be appropriate in each case, and to obtain consumer redress. 15 U.S.C. §§ 53(b) and 1607(c).

DEFENDANT

5. Defendant Domain Registry of America, Inc. (“DROA”) is a Canadian corporation. DROA has its principal place of business in Markham, Ontario, and maintains a mail drop in Buffalo, New York, from which it receives orders and payments sent by consumers

in the United States. DROA transacts or has transacted business in this District and throughout the United States.

COMMERCE

6. At all times relevant to this complaint, the defendant has maintained a substantial course of trade, advertising, offering for sale, and selling domain name services and other services in or affecting commerce as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFINITION

7. "Domain name services" shall mean any service offered by the defendant, directly, through third-party agents, or through joint marketing agreements, for registering, hosting, parking, reserving, renewing, or transferring domain names, including any solicitation for any such services.

DEFENDANT'S COURSE OF BUSINESS

8. DROA serves as a reseller of domain name registration services for eNom, Inc. ("eNom"), an ICANN-accredited registrar of second level domain names. DROA's domain name registration services enable its customers to establish their identities on the web.

9. In the course of offering domain name services, DROA has engaged in a direct mail marketing campaign aimed at soliciting consumers in the United States to transfer their domain name registrations from their current registrar to eNom through DROA.

10. DROA mails solicitations to consumers that appear to be renewal notices/invoices from consumers' then-current registrars advising the recipients that their domain names are about to expire and requesting payment for "renewal" of the domain name registrations. (A copy of defendant's solicitation is attached hereto as Exhibit A.)

11. DROA has mailed millions of these renewal notices/invoices throughout the United States to consumers who hold a domain name registration with a registrar other than eNom.

12. Defendant's renewal notices/invoices prominently feature a red, white, and blue American flag billowing over the company's name, Domain Registry of America. The renewal notices/invoices are captioned, "**IMPORTANT NOTICE,**" and urge recipients to act immediately to avoid "Register Lock" or "loss of your online identity." DROA further warns consumers, "Should you lose your domain name it may be impossible for you to get it back."

13. DROA's renewal notices/invoices also contain numerous representations stating, expressly or by implication, that DROA is offering to "renew" the consumers' domain name registrations even though the recipients of the renewal notices/invoices are actually customers of other registrars. For example, the words "renew" or "renewal" appear as many as 10 different times on the renewal notice/invoice. Defendant's renewal notices/invoices also do not disclose the identity of the recipients' then-current registrars. Moreover, in the invoice part of the renewal notices, DROA lists the expiring domain names and states, "**must be renewed.**"

14. Read as a whole, DROA's renewal notices/invoices convey to consumers the impression that unless they act immediately to "renew" their domain registrations by replying to defendant's renewal notices/invoices, they might lose them.

15. In many instances, consumers do not realize that by returning the invoices along with payment to “renew” their domain name registrations they are, in fact, transferring their domain name registrations from their then-current registrars to eNom. DROA’s renewal notices/invoices do not clearly and conspicuously inform consumers of this material fact.

16. Defendant’s renewal notices/invoices also fail to inform consumers that DROA charges a processing fee of \$4.50 for any transfers of domain name registrations that are not completed, even if through no fault of the consumers.

17. In many instances, DROA promises credits to consumers who request them, but fails to transmit the credits to the consumers’ credit card accounts in a timely manner.

VIOLATIONS OF THE FTC ACT

COUNT I

MISREPRESENTATION OF MATERIAL FACTS

18. In the course of advertising, marketing, promoting, offering for sale, and selling domain name services, in numerous instances, defendant represents, expressly or by implication, that consumers who receive defendant’s renewal notice/invoice are current customers of defendant and that by replying to defendant’s renewal notice/invoice, consumers will “renew” their domain registration with defendant.

19. In truth and in fact, consumers who receive this renewal notice/invoice are not current customers of defendant and by replying to defendant’s renewal notice/invoice, consumers will not “renew” their domain registration with defendant, but instead transfer their domain registration to defendant.

20. Therefore, defendant's representation, as set forth above, 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

FAILURE TO DISCLOSE MATERIAL INFORMATION

21. In the course of advertising, marketing, promoting, offering for sale, and selling domain name services, in numerous instances, defendant has represented, expressly or by implication, that the cost of defendant's service was the amount listed on its renewal notice/invoice.

22. Defendant has failed to clearly and conspicuously disclose to consumers that it charged a \$4.50 processing fee for any domain name registration transfers that were not completed.

23. The information contained in Paragraph 22 is material to consumers in their decisions to accept or purchase defendant's offers for domain name services.

24. Defendant's failure to disclose the material information described in Paragraph 22, in light of the representation made in Paragraph 21, constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

THE TRUTH IN LENDING ACT

25. Section 166 of the TILA, 15 U.S.C. § 1666e, requires creditors to promptly credit a consumer's credit card account upon acceptance of the return of goods or forgiveness of the

debt for services. Section 226.12(e) of Regulation Z, which implements Section 166 of the TILA, requires creditors to credit a consumer's credit card account within seven business days from accepting the return of property or forgiving a debt for services. 12 C.F.R. § 226.12(e). A violation of the TILA is a violation of the FTC Act. 15 U.S.C. § 108(c).

VIOLATION OF THE TRUTH IN LENDING ACT

COUNT III

26. DROA is a creditor as that term is defined in Section 103(f) of the TILA, 15 U.S.C. § 1602(f), and Section 226.2(a)(17)(ii) of Regulation Z, 12 C.F.R. § 226.2(a)(17)(ii).

27. Since at least January 2002, in numerous instances, DROA has failed to credit consumers' credit card accounts within seven business days from accepting the return of property or forgiving a debt for services and, therefore, has violated Section 166 of the TILA, 15 U.S.C. § 1666e, Section 226.12(e) of Regulation Z, 12 C.F.R. § 226.12(e), and Section 5 of the FTC Act, 15 U.S.C. § 45(a).

CONSUMER INJURY

28. Consumers throughout the United States have been injured as a result of defendant's unlawful acts or practices. Absent injunctive relief by this Court, defendant DROA is likely to continue to injure consumers and to harm the public interest. By granting the requested injunctive relief, the Court can permanently halt defendant's law violations.

THIS COURT'S POWER TO GRANT RELIEF

29. 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 and restitution, to prevent and remedy any violations of any provision of law enforced by the FTC.

30. This Court, in the exercise of its equitable jurisdiction, may award other ancillary relief to remedy injury caused by defendant's law violations.

PRAYER FOR RELIEF

WHEREFORE, plaintiff, the Federal Trade Commission, requests that this Court, as authorized by Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), Section 108(c) of the TILA, 15 U.S.C. § 1607(c), and pursuant to its own equitable powers:

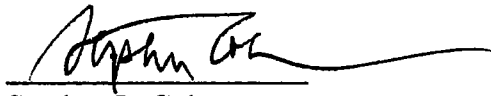
1. Permanently enjoin defendant from engaging in or assisting others in engaging in violations of the FTC Act, the TILA, and Regulation Z as alleged herein;
2. Award such relief as the Court finds necessary to redress injury to consumers resulting from the defendant's violations of the FTC Act, the TILA, and Regulation Z, including, but not limited to, refund of monies paid, redress, and rescission of contracts; 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.

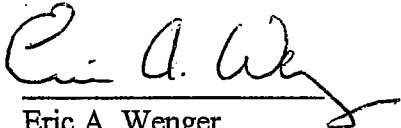
Dated: 1/17/03

Respectfully Submitted,

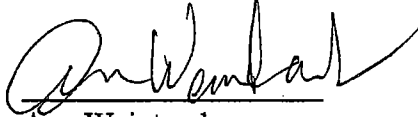
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