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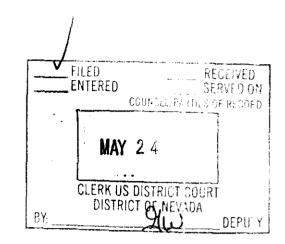
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UNITED STATES DISTRICT CV-S-04-0712-RCJ-RJJ

FEDERAL TRADE COMMISSION,

Plaintiff.

v.

3RD UNION CARD SERVICES INC., doing business as PHARMACYCARDS.COM, a Delaware Corporation; HELMCREST, LTD., a company incorporated under the laws of Cyprus, doing business as Pharmacycards.com;

DAVID GRAHAM TURNER, and STEVE PEARSON, individually and as officers of the above companies,

Defendants.

COMPLAINT FOR INJUNCTION AND OTHER EQUITABLE RELIEF

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

1. The FTC brings this action under Sections 5(a) and 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(a) and 53(b), to obtain temporary, preliminary and permanent injunctive relief, rescission or reformation of contracts, restitution, disgorgement, and other equitable relief in connection with defendants' unauthorized debiting of consumers' checking accounts, which constitute unfair acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

JURISDICTION AND VENUE

- 2. Subject matter jurisdiction is conferred upon this Court by 15 U.S.C. §§ 45(a) and 53(b), and 28 U.S.C. §§ 1331, 1337(a), and 1345.
- 3. Venue in the District of Nevada is proper under 15 U.S.C. § 53(b) and 28 U.S.C. §§ 1391(b), (c), and (d).

PLAINTIFF

4. Plaintiff 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 Commission may initiate federal district court proceedings by its own attorneys to enjoin violations of the FTC Act and to secure such equitable relief as may be appropriate in each case, including restitution for injured consumers. 15 U.S.C. § 53(b).

DEFENDANTS

5. Defendant 3rd Union Card Services, Inc. ("3rd Union"), is a Delaware corporation that does business as Pharmacycards.com. Its mailing address is 555 Route 78, Swanton, Vermont. Its registered agent is Harvard Business Services, Inc., 25 Greystone Manor, Lewes, Delaware. 3rd Union transacts or has transacted business in the District of Nevada.

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- 6. Defendant HelmCrest, Ltd. ("HelmCrest"), is a limited liability company organized under the laws of the country of Cyprus. HelmCrest also does business using the name Pharmacycards.com. The registered office of HelmCrest is located at Kastoros, 2, P.C. 1087, Nicosia, Cyprus. HelmCrest also does business from 377 Edgware Road, Marble Arch, London, England W2 1BT and 37 B New Cavendish Street, London, England W1M 8JQR. HelmCrest transacts or has transacted business in the District of Nevada.
- 7. Defendant David Graham Turner is an officer or director of HelmCrest and Pharmacycards. 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 the corporate defendants, including the acts and practices set forth in this complaint. Turner resides in London, England.
- 8. Defendant Steve Pearson is an officer or manager of HelmCrest and Pharmacycards. 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 the corporate defendants, including the acts and practices set forth in this complaint.

COMMERCE

9. 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' BUSINESS PRACTICES

10. Since at least January 2004, defendants have stolen millions of dollars from consumers' checking accounts by electronically debiting thousands of accounts, each for \$139, without consumers' knowledge or consent. Prior to the unauthorized debit of their checking accounts, consumers have had no contact with defendants. The only connection that consumers have to defendants is that their names and bank account COMPLAINT, FTC v. 3rd Union Card Services, Page 3 of 7

numbers were obtained by defendants. Defendants have attempted to debit more than \$10 million from consumer checking accounts in less than three months of operation.

- 11. Collectively, defendants operated this common enterprise under the business name of Pharmacycards.com. Depending on the business need, the individual defendants, Pearson and Turner, used the corporate shells of 3rd Union Card Services and HelmCrest to do business as Pharmacycards.com. When a U.S. presence was needed, 3rd Union was used, but when it was time for payment, the funds were wired to HelmCrest's account in Cyprus.
- 12. Defendants gained access to the banking system via third-party payment processors by claiming that they were engaged in a legitimate business offering consumers a discount prescription benefits card. They created a website, www.pharmacycards.com, that touted the benefits of the supposed program. The website promised that the benefits card would be accepted by most major pharmacies, and included logos from legitimate retailers like WalMart and Target. These retail pharmacies were not actually participating in any kind of discount prescription benefits program with defendants and defendants' use of their logos was not authorized. Moreover, most consumers did not receive any benefits card.
- 13. To further the illusion of legitimacy, defendants provided a toll-free customer service number. This number is answered at a call center in Montreal, Quebec, Canada. Defendants also claimed to have a mailing address in Vancouver, British Columbia. The address that they provided was false, however, and mail sent to that location is returned to the senders.
- 14. Some consumers received a direct mail solicitation from Pharmacycards.com, <u>after</u> their accounts were debited. The letter stated that because the consumer had previously purchased a product or service from one of defendants' "marketing partners" using their checking account, the consumer had no need to provide the account number again. The letter described the purported pharmacy discount card program and stated that consumers not interested need only call customer service and COMPLAINT, FTC v. 3rd Union Card Services, Page 4 of 7

cancel within five days of receipt of the letter. (Of course, by that time, the consumer's checking account had already been debited.) Other consumers never received this letter, or discarded it as junk mail.

15. Defendants provided consumers' checking account numbers to the third-party payment processors with whom they contracted to debit consumers' checking accounts. One processor debited 72,240 checking accounts for defendants, generating more than \$10 million in attempted debits. More than 50,000 of those transactions were cancelled or returned (a return rate of 69.51%). For the many additional consumers who are unaware of the transaction or unable to have it reversed, \$139 was removed without authorization from their bank account.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

- 16. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits unfair or deceptive acts or practices in or affecting commerce. An act or practice is unfair if it "causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition." 15 U.S.C. § 45(n).
- 17. In numerous instances, defendants have debited consumers' checking accounts without authorization.
- 18. Defendants' practice of debiting consumers' accounts without authorization causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or competition.
- 19. Defendants' unauthorized debiting of consumers' checking accounts, as alleged in Paragraphs 17-18, constitutes an unfair act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COMMON ENTERPRISE

20. Defendants 3rd Union Card Services, HelmCrest, Turner and Pearson have operated as a common business enterprise while engaging in the unfair acts and practices alleged above.

CONSUMER INJURY

21. Consumers throughout the United States have suffered substantial monetary loss as a result of defendants' unlawful acts or practices. 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, including consumer redress, disgorgement, and restitution, to prevent and remedy any violations of any provision of law enforced by the Commission.
- 23. This Court, in the exercise of its equitable jurisdiction, may award other ancillary relief to remedy injury caused by defendants' law violations.

PRAYER FOR RELIEF

WHEREFORE, plaintiff Federal Trade Commission, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and the Court's own equitable powers, requests 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;
- 2. Permanently enjoin defendants from violating the FTC Act as alleged herein;

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

4. 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: May 21, 2004

Respectfully Submitted, WILLIAM E. KOVACIC General Counsel

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