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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

JOEL GRANIK and JOSEPH LICHTER,
individually and as officers of
CYBERREBATE.COM, INC.,

Defendants.

04 3616

LINDSAY, M.J.

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT
AUG 20 2004
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HURLEY, J.

Civil Number

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

Plaintiff, the Federal Trade Commission ("Commission" or "FTC"), by its undersigned attorneys, alleges as follows:

1. This is an action under Section 13(b) of the Federal Trade Commission Act ("FTC

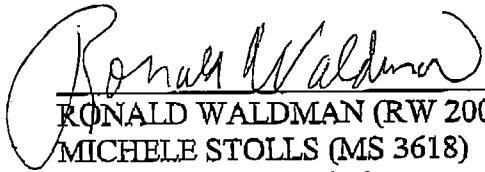
consumers resulting from defendants' violations of the FTC Act, including, but not limited to, consumer notification and/or education, rescission of contracts, the refund of monies paid, and the disgorgement of ill-gotten gains; and

- c. Award Plaintiff the costs of bringing this action, as well as such other and additional equitable relief as the Court may deem just and proper.

Dated: New York, New York
August 20, 2004

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Act”), 15 U.S.C. § 53(b), to secure a permanent injunction and other equitable relief against defendants for their deceptive acts or practices and false advertisements in connection with rebates offered for consumer products in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over Plaintiff’s claim pursuant to 28 U.S.C. §§ 1331 and 1345 and 15 U.S.C. §§ 45(a) and 53(b).

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

PLAINTIFF

4. Plaintiff FTC is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58. The FTC enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits deceptive acts or practices. The FTC may initiate federal district court proceedings to enjoin violations of the FTC Act and to secure such equitable relief as may be appropriate in each case. 15 U.S.C. § 53(b).

DEFENDANTS

5. Defendant Joel Granik is a director and 50% shareholder of Cyberrebate.com, Inc., (“Cyberrebate”), a New York company located at 70 E. Sunrise Highway, Suite 400, Valley Stream, NY 11581. Mr. Granik was the CEO of Cyberrebate from 1998 to June 2001. In connection with the matters alleged herein, Granik transacts business in the Eastern District of New York. At all times material to this complaint, Granik, individually or in concert with others, formulated, directed, controlled, or participated in the policies, acts, or practices of Cyberrebate, including the acts or practices alleged in this complaint.

6. Defendant Joseph Lichter is a director and Chief Operating Officer of Cyberrebate. Mr. Lichter is the beneficial owner of a voting trust that holds 50% of Cyberrebate stock. In connection with the matters alleged herein, Lichter transacts business in the Eastern District of New York. At all times material to this complaint, Lichter, individually or in concert with others, formulated, directed, controlled, or participated in the policies, acts, or practices of Cyberrebate, including the acts or practices alleged in this complaint.

COMMERCE

7. The acts and practices of defendants as alleged herein are in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS’ COURSE OF CONDUCT

8. Since at least 1998, and continuing until Cyberrebate filed for bankruptcy protection on May 16, 2001, defendants sold consumer products through Cyberrebate’s website Cyberrebate.com.

9. In early 2001, defendants changed Cyberrebate’s pricing policy from moderately marking up product prices to pricing products as much as ten times or more of the products’ suggested retail prices.

10. To induce consumers to purchase the products sold by Cyberrebate, in numerous instances, defendants represented that products sold would be “free” after receipt from defendants of a rebate equal to the purchase price. For example, the defendants offered products for sale as follows:

A. **“Sony” Digital 900 MHZ Cordless Phone Price:** \$699.99

FREE After Rebate

Rebate: \$699.99
After Rebate: \$0.00

B. **“RCA” 13 TV**
 FREE After Rebate

Price: \$1,099.99
Rebate: \$1,099.99
After Rebate: \$0.00

Cyberrebate represented in connection with products offering a 100% rebate that “We send you your rebate check 10-14 weeks after we receive your rebate submission.”

11. Defendants continued to induce consumers to purchase Cyberrebate’s products at these extraordinarily high prices even after the consumer rebate redemption rate for Cyberrebate’s products far exceeded defendants’ anticipated rebate redemption rate. Defendants failed to pay promised rebates to numerous purchasers of products sold by Cyberrebate.

12. On May 16, 2001, Cyberrebate filed a voluntary petition for relief under the reorganization provisions of Chapter 11 of the Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.* (the “Code”), in the United States Bankruptcy Court for the Eastern District of New York, Case No. 01-16534 (CEC). This action is not subject to the automatic stay applicable to Cyberrebate under Section 362(a) of the Code. Cyberrebate is not named as a defendant in this complaint and the relief sought herein does not affect property of Cyberrebate or Cyberrebate’s bankruptcy estate. In addition, the Commission’s action is an exercise of the Commission’s police or regulatory power as a governmental unit pursuant to Section 362(b)(4) of the Code and thus falls within an exception to the automatic stay.

DEFENDANTS' VIOLATIONS OF THE FTC ACT

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

COUNT ONE **FALSE REBATE REPRESENTATION**

14. Through the means described in Paragraphs 8-12, in numerous instances, defendants have represented, expressly or by implication, that purchasers of Cyberrebate's products would receive from Cyberrebate cash rebates within 10-14 weeks of its receipt of valid requests.

15. Since early 2001, in truth and in fact, in numerous instances, defendants did not deliver cash rebates to purchasers of Cyberrebate's products within 14 weeks of defendants' receipt of valid rebates or did not deliver cash rebates at all. Therefore, the representation set forth in Paragraph 14 was, and is, false or misleading in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT TWO

UNILATERAL MODIFICATION OF TERMS OR CONDITIONS OF **REBATE OFFER: UNFAIR BUSINESS PRACTICE**

16. Through the means described in Paragraphs 8-12, defendants have represented, expressly or by implication, that purchasers of Cyberrebate's products would receive from Cyberrebate cash rebates within 10-14 weeks of its receipt of valid requests.

17. After receiving rebate requests in conformance with the offer described in Paragraph 16, defendants, in numerous instances, either extended the time period in which it would deliver the rebates to consumers without consumers agreeing to this extension of time or

rejected paying rebates entirely. Respondent failed to deliver the rebates to consumers within the promised time period.

18. Defendants' practice set forth in Paragraphs 16 and 17 were not reasonably avoidable, and caused substantial injury to consumers that was not outweighed by countervailing benefits to consumers or competition. This practice was, and is, an unfair act or practice.

CONSUMER INJURY

19. Consumers throughout the United States have suffered and continue to suffer 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. Absent injunctive relief by this Court, defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

20. 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 notification and/or education, consumer redress, disgorgement, and restitution, to prevent and remedy any violations of any provision of law enforced by the FTC.

PRAYER FOR RELIEF

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

- a. Permanently enjoin defendants from violating Section 5 of the FTC Act as alleged herein;
- b. Award such equitable relief as the Court finds necessary to redress injury to