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12	UNITED STATES DISTRICT COURT	
13	DISTRICT OF NEVADA	
14		n
15	FEDERAL TRADE COMMISSION,	CV-S-04-0712-RCJ-RJJ
16	Plaintiff,	AMENDED COMPLAINT FOR INJUNCTION AND OTHER
17	v.	EQUITABLE RELIEF
18	3RD UNION CARD SERVICES INC., doing business as	
19	PHARMACYCARDS.COM, a Delaware Corporation.	
20	DAVID GRAHAM TURNER, individually and doing business as	
21	individually and doing business as HELMCREST, LTD., and PHARMACYCARDS.COM, and as an	
22	officer or director of 3RD UNION CARD SERVICES and STEVE PEARSON, individually and doing hydrogen as	
23	individually and doing business as HELMCREST, LTD., and PHARMACYCARDS.COM, and as an	
24	officer or director of 3RD UNION CARD SERVICES.	
25 26	Defendants.	

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 Amended Complaint, FTC v. 3rd Union Card Services, Page 2 of 7

Greystone Manor, Lewes, Delaware. 3rd Union transacts or has transacted business in the District of Nevada.

- 6. Defendant David Graham Turner is an officer or director of 3rd Union. Turner has operated the Pharmacycards.com scheme doing business under the name of HelmCrest, Ltd., as well as through 3rd Union. 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 claims to reside in London, England. Through HelmCrest, Turner has also done business from 377 Edgware Road, Marble Arch, London, England W2 1BT and 37 B New Cavendish Street, London, England W1M 8JQR. Through telephone calls, facsimile transmissions, email and other correspondence, Turner has transacted business in the District of Nevada.
- 7. Defendant Steve Pearson is an officer or manager of 3rd Union. Pearson has operated the Pharmacycards.com scheme doing business under the name of HelmCrest, Ltd., as well as through 3rd Union. 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. Through HelmCrest, Pearson has also done business from 377 Edgware Road, Marble Arch, London, England W2 1BT and 37 B New Cavendish Street, London, England W1M 8JQR. Through telephone calls, facsimile transmissions, email and other correspondence, Pearson has transacted business in the District of Nevada.

COMMERCE

8. 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

- 9. 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 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.
- 10. 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 shell of 3rd Union Card Services or the dba of HelmCrest, Ltd., 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 an account in the name of HelmCrest in Cyprus. Turner and Pearson claimed that they owned HelmCrest, Ltd., a properly chartered corporate entity organized under the laws of Cyprus. In fact, although a Cyprus corporation known as HelmCrest, Ltd., exists, it is not an entity under the control of Turner or Pearson and it has not done business as Pharmacycards.com. Rather, Turner and Pearson stole its corporate identity for use in connection with the Pharmacycards.com scheme.
- 11. 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.

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- 12. 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.
- 13. 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 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.
- 14. 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

15. 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).

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- 16. In numerous instances, defendants have debited consumers' checking accounts without authorization.
- 17. 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.
- 18. Defendants' unauthorized debiting of consumers' checking accounts, as alleged in Paragraphs 16-17, constitutes an unfair act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COMMON ENTERPRISE

19. 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

20. 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

- 21. 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.
- 22. This Court, in the exercise of its equitable jurisdiction, may award other ancillary relief to remedy injury caused by defendants' law violations.

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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;
- 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: Nov. 17th, 2004

Respectfully Submitted, WILLIAM E. KOVACIC General Counsel

Tracy S. Thorleifson Mary T. Benfield

Federal Trade Commission

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Attorneys For Plaintiff Federal Trade Commission

CERTIFICATE OF SERVICE

I, Laureen France, am a citizen of the United States, over the age of eighteen years, and a resident of King County, Washington. I am an employee of the Federal Trade Commission. My business address is 915 Second Avenue, Suite 2896, Seattle, WA 98174.

On November 17, 2004, I transmitted copies of the foregoing document to defendants David Graham Turner, individually and d.b.a. HelmCrest, Ltd., and Pharmacycards.com and Steve Pearson, individually and d.b.a. HelmCrest, Ltd., and

Pharmacycards.com, at the following email addresses and facsimile telephone numbers:

Facsimile telephone numbers: (309) 420-6645, (775) 206-2608, 011-44-700-580-0570, and 011-44-2628-4040.

pharmacycards@mailforce.net, outsource@fastmail.us, cashgenerator@fastmail.us, icallanytime@aol.com, paolo.vanoli@ziplip.com., paymypals@yahoo.co.uk,

justaskme@hotmail.com, justaskme@msn.com, bigdoris@aol.com, p barnes@yellowinfopages.com, and zooperman@hotmail.com.

Email addresses: ccorder@ziplip.com, bpowork@speedpost.net,

I declare under penalty of perjury that the foregoing is true and correct.

Executed this / day of November 2004.

Laureen France, Investigator