

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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MICHAEL W. DODDAS
CLERK, U.S. DISTRICT COURT

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

XTEL MARKETING, INC.,
an Ontario corporation,

NAVIN BABOOLAL, individually and as an
officer of the corporate defendant, and

ANNILLA RAMKISSOON, individually,

d/b/a MILLENIUM CONSULTING and MED SUPPLY,

Defendants.

JUDGE ZAGEL

MAGISTRATE JUDGE
GERALD... (2014/11/09)

Civil Action No.

040 7238

COMPLAINT FOR PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF

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

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, the Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing Act"), 15 U.S.C. §§ 6101, *et seq.*, and Section 522(a) of the Gramm-Leach-Bliley Act ("GLB Act"), 15 U.S.C. § 6822(a), to secure temporary, 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), the FTC's Telemarketing Sales Rule, 16 C.F.R. Part 310, and Section 521 of the GLB Act, 15 U.S.C. § 6821.

JURISDICTION AND VENUE

1. 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.

2. Venue in the United States District Court for the Northern District of Illinois is proper under 15 U.S.C. §§ 53(b) and 6103(e) and 28 U.S.C. § 1391(d).

PLAINTIFF

3. Plaintiff, the FTC, is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58, as amended. 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. In addition, the Commission enforces Section 521(a) of the GLB Act, which prohibits, among other things, the use of false pretenses to obtain from a customer, "customer information of a financial institution." 15 U.S.C. § 6821(a). The Commission may initiate federal district court proceedings by its own attorneys to enjoin violations of any law enforced by the Commission and to secure such equitable relief as may be appropriate in each case, including restitution for injured customers. 15 U.S.C. §§ 53(b), 57b, and 6105(b).

DEFENDANTS

4. Defendant Xtel Marketing, Inc., is an Ontario corporation with its offices and principal place of business located at 559-B Yonge Street, Suite 287, Toronto, Ontario, Canada M4Y 1Z4. Defendant Xtel Marketing, Inc., transacts or has transacted business throughout the United States.

5. Defendant Navin Baboolal is an officer or director of Xtel Marketing, Inc. At all times relevant 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 defendant, including the acts and practices set forth in this Complaint. Navin Baboolal transacts or has transacted business throughout the United States.

6. At all times relevant to this Complaint, Defendant Annilla Ramkissoon, acting alone or in concert with others, has formulated, directed, controlled, or participated in the acts and practices of the corporate defendant, including the acts and practices set forth in this Complaint. Annilla Ramkissoon transacts or has transacted business throughout the United States.

7. The defendants have done business as Millenium Consulting and Med Supply.

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' COURSE OF CONDUCT

9. Since at least 2002 defendants have made unsolicited outbound telephone calls to consumers throughout the United States, most of whom are Social Security, Supplemental Security Income, and Medicare beneficiaries.

10. Defendants claim that they are calling on behalf of the Social Security Administration or Medicare. During the calls, defendants attempt to get consumers to provide their bank account information. Defendants often state that the government needs to have consumers provide the account information again because of a computer problem. In other cases, defendants have claimed that the bank account information was needed in order to continue or to increase benefit payments, lower premiums, or to insure that benefit payments arrive on time.

11. Some consumers resist providing the banking information. Defendants often threaten to delay or to stop benefit payments to consumers who are reluctant to provide their bank account information.

12. After obtaining bank account information, defendants tout a new Medicare program and offer to provide a new government-sponsored drug discount card that will entitle consumers to substantial savings on medication and eyeglass purchases. In some cases, defendants inform consumers that they must pay a \$299 fee for the card. In others, defendants suggest that the payment of the fee serves some other purpose, such as satisfaction of future Medicare payment obligations. Notwithstanding what defendants say about the fees, defendants often do not obtain consumers' clear affirmative consent to pay the charges.

13. Defendants debit the \$299 fee from consumers' bank accounts whether or not consumers clearly agree to pay the fees.

14. Defendants do not provide consumers with new Medicare insurance cards or drug discount cards, discounts on medication or eyeglass purchases, or anything else.

15. Defendants are not affiliated with the Social Security Administration, Medicare, or the United States government and are not authorized by those agencies or the United States government to claim such an affiliation.

16. Defendants have collected nearly one million dollars through these practices.

VIOLATIONS OF THE FEDERAL TRADE COMMISSION ACT

17. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits unfair or deceptive acts or practices in or affecting commerce. Misrepresentations or omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

COUNT I

18. In numerous instances, defendants or their employees or agents have represented, directly or by implication, that:

A. Defendants are employed by or affiliated with the Social Security Administration or Medicare;

B. Consumers are required to provide defendants with bank account information because a computer failure caused the Social Security Administration to lose that information;

C. The payment of Social Security, Supplemental Security Income, or Medicare benefits will be delayed, interrupted, or halted if consumers do not provide information requested by defendants; and

D. After debiting \$299 from consumers' bank accounts, defendants will provide consumers with new Medicare insurance cards or drug discount cards that will entitle consumers to discounts on purchases of medications and eyeglasses.

19. In truth and in fact,

A. Defendants are not employed by or affiliated with the Social Security Administration or Medicare;

B. Consumers are not required to provide defendants with bank account information because a computer failure caused the Social Security Administration to lose that information;

C. The payment of Social Security, Supplemental Security Income, or Medicare benefits will not be delayed, interrupted, or halted if consumers do not provide information requested by defendants; and

D. After debiting \$299 from consumers' bank accounts, defendants will not provide consumers with new Medicare insurance cards or drug discount cards that will entitle consumers to discounts on purchases of medications and eyeglasses.

20. Therefore, the representations set forth in Paragraph 18 are false and misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

THE TELEMARKETING SALES RULE

21. The Commission promulgated the Telemarketing Sales Rule ("Original TSR") pursuant to Section 6102(a) of the Telemarketing Act, 15 U.S.C. § 6102(a). The Original Rule became effective on December 31, 1995. On January 29, 2003, the FTC amended the Original

TSR by issuing a Statement of Basis and Purpose and the final amended TSR (“Amended TSR”).
68 Fed. Reg. 4580, 4669.

22. Among other things, both the Original TSR and the Amended TSR prohibit telemarketers and sellers from misrepresenting, directly or by implication, any material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of a sales offer. 16 C.F.R. § 310.3(a)(2)(iii).

23. Both the Original TSR and the Amended TSR also prohibit telemarketers and sellers from misrepresenting, directly or by implication, a seller’s or telemarketer’s affiliation with, or endorsement or sponsorship by, any person or government agency.
16 C.F.R. § 310.3(a)(2)(vii).

24. 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), a violation of the TSR constitutes an unfair or deceptive act or practice in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

25. Defendants are “sellers” or “telemarketers” engaged in “telemarketing,” as those terms are defined in the Original TSR, 16 C.F.R. §§ 310.2(r), (t), and (u), and the Amended TSR, 16 C.F.R. §§ 310.2(z), (bb) & (cc).

VIOLATIONS OF THE TELEMARKETING SALES RULE

COUNT II

26. In numerous instances, defendants or their employees or agents have misrepresented, directly or by implication, that, after debiting \$299 from consumers’ bank accounts, defendants will provide consumers with new Medicare insurance cards or drug

discount cards that will entitle consumers to discounts on purchases of medications and eyeglasses.

27. Defendants have thereby violated Section 310.3(a)(2)(iii) of the Original and Amended TSR, 16 C.F.R. § 310.3(a)(2)(iii).

COUNT III

28. In numerous instances, defendants or their employees or agents have misrepresented that defendants are employed by or affiliated with the Social Security Administration or Medicare.

29. Defendants have thereby violated Section 310.3(a)(2)(vii) of the Original and Amended TSR, 16 C.F.R. § 310.3(a)(2)(vii).

THE GRAMM-LEACH-BLILEY ACT

30. Section 521 of the Gramm-Leach-Bliley Act, 15 U.S.C. § 6821, became effective on November 12, 1999, and remains in full force and effect. Section 521(a) of the GLB Act, 15 U.S.C. § 6821(a), prohibits any person from “obtain[ing] or attempt[ing] to obtain . . . customer information of a financial institution relating to another person . . . 2) by making a false, fictitious, or fraudulent statement or representation to a customer of a financial institution.”

31. The GLB Act defines “customer information of a financial institution” as “any information maintained by or for a financial institution which is derived from the relationship between the financial institution and a customer of the financial institution and is identified with the customer.” 15 U.S.C. § 6827(2).

32. The GLB Act empowers the FTC to enforce Section 521 of the GLB Act “in the same manner and with the same power and authority as the Commission has under the Fair Debt

Collection Practices Act [FDCPA] . . . to enforce compliance with such Act.” 15 U.S.C. § 6822(a). The FDCPA, in turn, provides that “[a]ll of the functions and powers of the Commission under the [FTC Act] are available to the Commission to enforce compliance” with the FDCPA. 15 U.S.C. § 1692*l*. The FDCPA also provides that a violation of the FDCPA “shall be deemed an unfair or deceptive act or practice in violation of [the FTC Act].” *Id.* Therefore, violations of Section 521 of the GLB Act, 15 U.S.C. § 6821, constitute unfair or deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

“PRETEXTING” VIOLATIONS OF THE GRAMM-LEACH-BLILEY ACT

COUNT IV

33. In numerous instances, defendants induce consumers to divulge their customer information of a financial institution by representing, expressly or by implication, that defendants are affiliated with, or calling from or on behalf of, a government entity.

34. In truth and in fact, defendants are not affiliated with, or calling from or on behalf of, a government entity.

35. By making these false, fictitious, and fraudulent representations to customers of financial institutions, defendants obtain or attempt to obtain “customer information of a financial institution,” including bank account numbers and routing numbers.

36. Therefore, defendants’ acts or practices set forth in Paragraph 33 violate Section 521 of the GLB Act, 15 U.S.C. § 6821, and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

CONSUMER INJURY

37. 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 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

38. 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 Section 522(a) of the GLB Act, 15 U.S.C. § 6822(a), empower this Court to issue a permanent injunction against defendants' violations of the FTC Act, the Telemarketing Sales Rule, the GLB Act, and, in the exercise of its equitable jurisdiction, to order such ancillary relief as a preliminary injunction, rescission, restitution, disgorgement of profits resulting from defendants' unlawful acts or practices, and other remedial measures.

PRAYER FOR RELIEF

WHEREFORE, plaintiff, the Federal Trade Commission, requests that this Court, as authorized by 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), Section 522(a) of the GLB Act, 15 U.S.C. § 6822(a), and pursuant to the Court's own equitable powers:

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, and an order freezing assets;

2. Permanently enjoin defendants from violating the FTC Act, the Telemarketing Sales Rule, and the GLB Act, as alleged herein;

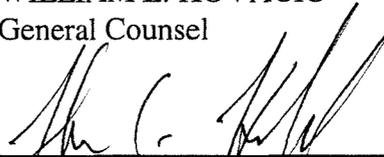
3. Award such relief as the Court finds necessary to redress injury to consumers resulting from defendants' violations of the FTC Act, the Telemarketing Sales Rule, and GLB Act, including, but not limited to, rescission or reformation of contracts, restitution, refund of monies paid, and disgorgement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

4. Award plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

Dated: November 9, 2004.

Respectfully Submitted,

WILLIAM E. KOVACIC
General Counsel



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