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U.S. DISTRICT COURT
2005 FEB 16 A 9 08

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA,

Plaintiff,

v.

FLAGSHIP RESORT DEVELOPMENT
CORPORATION, a New Jersey
corporation,
60 N. Maine Avenue
Atlantic City, New Jersey 08401,

and

ATLANTIC PALACE DEVELOPMENT,
LLC, a New Jersey limited liability
corporation,
1507 New York Avenue
and the Boardwalk
Atlantic City, New Jersey 08401,

Defendants.

Civil No. _____

**COMPLAINT FOR
CIVIL PENALTIES,
PERMANENT INJUNCTION, AND
OTHER RELIEF**

Plaintiff, the United States of America, acting upon notification and authorization to the Attorney General by the Federal Trade Commission ("FTC" or "Commission"), pursuant to Section 16(a)(1) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 56(a)(1), for its complaint alleges:

1. Plaintiff brings this action under Sections 5(a), 5(m)(1)(A), 13(b), 16(a) and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b), 56(a) and 57b, and Section 6 of the Telemarketing and Consumer Fraud and Abuse Prevention Act (the "Telemarketing Act"), 15 U.S.C. § 6105, to obtain monetary civil penalties, a permanent injunction, and other equitable relief for defendants' violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the FTC's Telemarketing Sales Rule (the "TSR" or "Rule"), 16 C.F.R. Part 310, as amended by 68 Fed. Reg. 4580, 4669 (January 29, 2003).

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355, and 15 U.S.C. §§ 45(m)(1)(A), 53(b), 56(a), and 57b. This action arises under 15 U.S.C. § 45(a).
3. Venue is proper in this District under 28 U.S.C. §§ 1391(b)-(c) and 1395(a), and 15 U.S.C. § 53(b).

DEFENDANTS

4. Defendant Flagship Resort Development Corporation ("Flagship Resort") is a New Jersey corporation with its principal place of business at 60 N. Maine Avenue, Atlantic City, New Jersey 08401. Flagship Resort is both a telemarketer and a seller of goods or services, including timeshare and vacation properties, to consumers. Flagship Resort transacts or has transacted business in this District.
5. Defendant Atlantic Palace Development, LLC ("Atlantic Palace") is a New Jersey limited liability company with its principal place of business at 1507 New York Avenue and the Boardwalk, Atlantic City, New Jersey 08401. Atlantic Palace is under common control with Flagship Resort. It is a seller of goods or services, including timeshare and

vacation properties, to consumers. Atlantic Palace transacts or has transacted business in this District.

THE TELEMARKETING SALES RULE
AND THE NATIONAL DO NOT CALL REGISTRY

6. In 1994, Congress directed the FTC to prescribe rules prohibiting abusive and deceptive telemarketing acts or practices pursuant to the Telemarketing Act, 15 U.S.C. §§ 6101-6108. On August 16, 1995, the FTC adopted the Telemarketing Sales Rule (the "Original TSR"), 16 C.F.R. Part 310, which became effective on December 31, 1995. On January 29, 2003, the FTC amended the TSR by issuing a Statement of Basis and Purpose and the final amended TSR (the "Amended TSR"). 68 Fed. Reg. 4580, 4669.
7. Among other things, the Amended TSR established a "do-not-call" registry, maintained by the Commission (the "National Do Not Call Registry" or "Registry"), of consumers who do not wish to receive certain types of telemarketing calls. Consumers register their telephone numbers on the Registry without charge either through a toll-free telephone call or over the Internet at donotcall.gov.
8. Sellers, telemarketers, and other permitted organizations can access the Registry over the Internet at telemarketing.donotcall.gov to download the registered numbers, after paying the appropriate annual fee as set forth in 16 C.F.R. § 310.8(c).
9. It is a violation of the Amended TSR for sellers and telemarketers subject to the FTC's jurisdiction to call numbers on the Registry. 16 C.F.R. § 310.4(b)(1)(iii)(B). In addition, sellers and telemarketers are prohibited from abandoning any outbound telephone call by not connecting the call to a representative within two (2) seconds of the consumer's completed greeting. 16 C.F.R. § 310.4(b)(1)(iv). Finally, sellers and telemarketers are

generally prohibited from calling any telephone number within a given area code, unless the seller has first paid the annual fee for access to the telephone numbers, within that area code, that are included in the Registry. 16 C.F.R. § 310.8(a) and (b).

10. Consumers who receive telemarketing calls to their registered numbers can complain of Registry violations the same way they registered, through a toll-free telephone call or over the Internet at donotcall.gov, or by otherwise contacting law enforcement authorities.
11. On or after September 2, 2003, the FTC opened access for sellers and telemarketers to begin registering, paying the fee(s) for, and accessing the Registry.
12. On or after October 1, 2003, the FTC began enforcement of the Amended TSR's prohibition against sellers and telemarketers abandoning outbound calls to consumers.
13. On or after October 17, 2003, the FTC began enforcement of the National Do Not Call Registry against sellers and telemarketers.
14. Pursuant to Section 3(e) of the Telemarketing Act, 15 U.S.C. § 6102(e), 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).

DEFENDANTS' BUSINESS ACTIVITIES

15. Defendants are "sellers" or "telemarketers" engaged in "telemarketing," as defined by the Amended TSR, 16 C.F.R. § 310.2.
16. Flagship Resort is both a seller and telemarketer of timeshare and vacation properties to consumers. On its own behalf, and on behalf of Atlantic Palace, Flagship Resort has placed outbound telephone calls to consumers to induce the purchase of its or Atlantic Palace's goods or services.

17. Atlantic Palace is a seller of timeshare and vacation properties to consumers. It has caused Flagship Resort to place outbound telephone calls to consumers to induce the purchase of its goods or services.
18. Flagship Resort and Atlantic Palace have caused a telemarketer, Braglia Marketing Group, LLC, a Nevada limited liability company ("BMG"), to place outbound telemarketing calls to consumers by agreeing to pay BMG for providing defendants with marketing services.
19. On or after October 17, 2003, Flagship Resort has placed, on behalf of itself and Atlantic Palace, numerous telemarketing calls to consumers' telephone numbers that are on the National Do Not Call Registry.
20. On or after October 17, 2003, defendants have caused BMG to place numerous telemarketing calls to consumers' telephone numbers that are on the National Do Not Call Registry.
21. On or after October 17, 2003, Flagship Resort has placed, or caused others to place, numerous calls to telephone numbers in various area codes without defendants first paying the annual fee for access to the telephone numbers, within that area code, that are on the National Do Not Call Registry.
22. On or after October 1, 2003, defendants have abandoned, or caused BMG to abandon, numerous telemarketing calls to consumers by failing to connect the call to a representative within two (2) seconds of the consumer's completed greeting.
23. At all times relevant to this complaint, defendants have maintained a substantial course of trade or business in the offering for sale and sale of goods or services via the telephone, in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

VIOLATIONS OF THE TELEMARKETING SALES RULE

**Count I
(Violating the National Do Not Call Registry)**

24. In numerous instances, in connection with telemarketing, defendants have initiated, or caused others to initiate, an outbound telephone call to a person's telephone number on the National Do Not Call Registry in violation of the TSR, 16 C.F.R. § 310.4(b)(1)(iii)(B).

**Count II
(Abandoning Calls)**

25. In numerous instances, in connection with telemarketing, defendants have abandoned, or caused others to abandon, an outbound telephone call by failing to connect the call to a sales representative within two (2) seconds of the completed greeting of the person answering the call, in violation of the TSR, 16 C.F.R. § 310.4(b)(1)(iv) and § 310.4(b)(4).

**Count III
(Failing to Pay the Fee to Access the National Do Not Call Registry)**

26. In numerous instances, in connection with telemarketing, defendants have initiated, or caused others to initiate, an outbound telephone call to a telephone number within a given area code without defendants, either directly or through another person, first paying the required annual fee for access to the telephone numbers, within that area code, that are on the National Do Not Call Registry, in violation of the TSR, 16 C.F.R. § 310.8.

CONSUMER INJURY

27. Consumers in the United States have suffered and will suffer injury as a result of defendants' violations of the TSR. 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

28. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and other ancillary relief to prevent and remedy any violation of any provision of law enforced by the FTC.
29. Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A), as modified by Section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended, and as implemented by 16 C.F.R. § 1.98(d) (1997), authorizes this Court to award monetary civil penalties of not more than \$11,000 for each violation of the TSR. Defendants' violations of the TSR were committed with the knowledge required by Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A).
30. This Court, in the exercise of its equitable jurisdiction, may award ancillary relief to remedy injury caused by defendants' violations of the Rule and the FTC Act.

PRAYER FOR RELIEF

WHEREFORE, plaintiff requests that this Court, as authorized by Sections 5(a), 5(m)(1)(A), 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b) and 57b, and pursuant to its own equitable powers:

1. Enter judgment against defendants and in favor of plaintiff for each violation alleged in this complaint;
2. Award plaintiff monetary civil penalties from defendants for every violation of the TSR;
3. Permanently enjoin defendants from violating the TSR and the FTC Act;
4. Order defendants to pay the costs of this action; and

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5. Award plaintiff such other and additional relief as the Court may determine to be just and proper.

Dated: February 16, 2005

OF COUNSEL:

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Respectfully submitted,

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