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13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA

15 _____)
16 FEDERAL TRADE COMMISSION,) CV.
)
17 Plaintiff,)
)
18 v.) COMPLAINT FOR INJUNCTIVE AND
) OTHER EQUITABLE RELIEF
)
19 Del Sol LLC, also d/b/a Del)
Sol Educational,)
20)
)
21 and)
)
22 Fernando Lopez Gonzalez,)
)
)
23 Defendants.)
)
24 _____)

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

27 1. Plaintiff FTC brings this action under Sections 13(b)
28 and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C.

1 §§ 53(b) and 57b, and the Telemarketing and Consumer Fraud and
2 Abuse Prevention Act ("Telemarketing Act"), 15 U.S.C. §§ 6101 *et*
3 *seq.*, to secure temporary, preliminary and permanent injunctive
4 relief, rescission of contracts and restitution, disgorgement of
5 ill-gotten gains, and other equitable relief against Defendants
6 for engaging in deceptive acts or practices in violation of
7 Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the FTC's
8 Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310.

9 **JURISDICTION AND VENUE**

10 2. This Court has subject matter jurisdiction over the
11 FTC's claims pursuant to 15 U.S.C. §§ 45(a), 53(b), 57b, and
12 6105(b), and 28 U.S.C. §§ 1331, 1337(a), and 1345.

13 3. Venue in the Central District of California is proper
14 under 15 U.S.C. § 53(b) and 28 U.S.C. § 1391(b) and (c).

15 **PLAINTIFF**

16 4. Plaintiff, Federal Trade Commission, is an independent
17 agency of the United States government created by statute.
18 15 U.S.C. §§ 41 *et seq.* The Commission enforces Section 5(a) of
19 the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or
20 deceptive acts or practices in or affecting commerce. The
21 Commission also enforces the TSR, 16 C.F.R. Part 310, which
22 prohibits deceptive or abusive telemarketing acts or practices.
23 The Commission may initiate federal district court proceedings,
24 through its attorneys, to enjoin violations of the FTC Act and the
25 TSR, and to secure such other equitable relief, including
26 rescission of contracts and restitution, and disgorgement of ill-
27 gotten gains, as may be appropriate in each case. 15 U.S.C.
28 §§ 53(b), 57b, and 6105(b).

1 DEFENDANTS

2 5. Defendant Del Sol LLC ("Del Sol"), also doing business
3 as Del Sol Educational, is a California limited liability
4 corporation with a principal place of business of 1578-G W. San
5 Bernardino Road, Covina, California 91722. Del Sol transacts or
6 has transacted business in the Central District of California.

7 6. Defendant Fernando Lopez Gonzalez ("Gonzalez") is the
8 sole officer and director of Del Sol. At all times material to
9 this Complaint, acting alone or in concert with others, he has
10 formulated, directed, controlled, or participated in the acts and
11 practices of Del Sol, including the acts and practices set forth
12 in this Complaint. Gonzalez resides in and transacts or has
13 transacted business in the Central District of California.

14 COMMERCE

15 7. At all times material to this Complaint, Defendants'
16 course of trade has been in or affecting commerce, as "commerce"
17 is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

18 DEFENDANTS' BUSINESS PRACTICES

19 8. Since at least 2003, Defendants, directly or through
20 their representatives, have telemarketed prize promotions to
21 consumers throughout the United States.

22 9. During the course of outbound telemarketing calls,
23 Defendants have solicited principally Spanish-speaking consumers,
24 notifying them that they have won a "prize." These "prizes"
25 typically include a laptop computer, digital video camera, or
26 other electronic device of commensurate value.

27 10. After promising consumers their prize, Defendants have
28 told consumers that, in order to obtain the prize, they must

1 purchase merchandise including, but not necessarily limited to,
2 specified brand-name designer colognes, perfume, watches, and
3 musical compact discs ("CDs") at prices ranging from \$213 to \$238.
4 Defendants also have told consumers that this merchandise will
5 include brands such as Calvin Klein, Tommy Hilfiger, Caroline
6 Herrera, Polo and Hugo Boss. Defendants have told consumers they
7 could select the recording artists that will be featured on the
8 musical CDs. Many consumers have responded to these solicitations
9 by agreeing to purchase Defendants' merchandise.

10 11. Defendants' telemarketers have informed consumers that
11 they do not accept personal checks or credit cards. They have
12 explained that the shipment will arrive Cash on Delivery
13 ("C.O.D."), and have advised consumers to obtain a money order to
14 give to the delivery person. Defendants have shipped the
15 merchandise via United Parcel Service ("UPS"), whose C.O.D.
16 policies prohibit the opening and inspection of packages before
17 payment.

18 12. Consumers who have provided a money order and have
19 accepted and opened the Defendants' package soon find that they
20 have not received what they were promised. Rather than the
21 promised laptop computer, digital video camera, or other prize of
22 commensurate value, Defendants have shipped consumers an
23 inexpensive electronic device that enables them to access the
24 Internet via their television sets or other inexpensive gadgets.

25 13. Rather than the promised specified brand-name
26 merchandise and musical CDs featuring the consumers' selected
27 artists, Defendants have shipped consumers bottles of inexpensive
28 perfume or cologne, imitation ("knock-off") versions of brand-name

1 watches (such as "Calvin Hill"), and CDs from recording artists
2 they did not request.

3 14. Numerous consumers who have attempted to telephone
4 Defendants to complain about the products and seek refunds have
5 been unable to reach an operator, have been put on hold for long
6 periods, or have been disconnected. In several instances where
7 consumers were able to reach Defendants, Defendants' telemarketers
8 have told consumers that they have received the correct order, and
9 that Defendants do not provide refunds.

10 **THE FEDERAL TRADE COMMISSION ACT**

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

16 **VIOLATIONS OF SECTION 5 OF THE FTC ACT**

17 **COUNT I: MISREPRESENTATION OF PRIZE OFFER**

18 16. In connection with the marketing of prize offers,
19 Defendants have represented, expressly or by implication, that
20 consumers who participate in their prize offer will receive a
21 laptop computer, digital video camera, or other electronic device
22 of commensurate value.

23 17. In truth and in fact, consumers who participated in
24 Defendants' prize offer did not receive a laptop computer, digital
25 video camera, or other electronic device of commensurate value.

26 18. Therefore, the representation set forth in paragraph 16
27 is false and misleading and constitutes a deceptive act or
28

1 practice, in or affecting commerce, in violation of Section 5(a)
2 of the FTC Act, 15 U.S.C. § 45(a).

3 **COUNT II:**

4 **MISREPRESENTATION OF MERCHANDISE ACCOMPANYING PRIZE OFFER**

5 19. In connection with their prize offer, Defendants have
6 represented, expressly or by implication, that Defendants will
7 ship to consumers, who pay a price ranging from \$213 to \$238,
8 specified brand-name merchandise and musical CDs featuring
9 recording artists selected by the consumers.

10 20. In truth and in fact, Defendants did not ship to
11 consumers, who paid a price ranging from \$213 to \$238, specified
12 brand-name merchandise or musical CDs featuring recording artists
13 selected by the consumers. Instead, Defendants have shipped
14 consumers bottles of inexpensive perfume or cologne, imitation
15 ("knock-off") versions of designer watches, and CDs of recording
16 artists that the consumers did not select.

17 21. Therefore, the representation set forth in paragraph 19
18 is false and misleading and constitutes a deceptive act or
19 practice, in or affecting commerce, in violation of Section 5(a)
20 of the FTC Act, 15 U.S.C. § 45(a).

21 **THE FTC'S TELEMARKETING SALES RULE**

22 22. In the Telemarketing Act, 15 U.S.C. §§ 6101 *et seq.*,
23 Congress directed the FTC to prescribe rules prohibiting abusive
24 and deceptive telemarketing acts or practices. On August 16,
25 1995, the FTC promulgated the TSR ("Original TSR"), 16 C.F.R. Part
26 310, which became effective on December 31, 1995. On January 29,
27 2003, the FTC amended the TSR by issuing a Statement of Basis and
28 Purpose and the final amended TSR ("Amended TSR"). 68 Fed. Reg.

1 4580, 4669. Except for specific provisions not at issue here, the
2 Amended TSR became effective March 31, 2003.

3 23. Both the Original and the Amended TSR prohibit sellers
4 and telemarketers from making a false or misleading statement to
5 induce any person to pay for goods or services. Original and
6 Amended TSR, 16 C.F.R. § 310.3(a)(4).

7 24. Pursuant to Section 3(c) of the Telemarketing Act, 15
8 U.S.C. § 6102(c), and Section 18(d)(3) of the FTC Act, 15 U.S.C.
9 § 57a(d)(3), violations of the TSR constitute unfair or deceptive
10 acts or practices, in or affecting commerce, in violation of
11 Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

12 25. Defendants are "sellers" or "telemarketers" engaged in
13 "telemarketing" as those terms are defined in the Original TSR,
14 16 C.F.R. §§ 310.2(r), (t), and (u), and the Amended TSR, 16
15 C.F.R. §§ 310.2(z), (bb), and (cc).

16 **COUNT III: FALSE AND MISLEADING STATEMENTS TO INDUCE A PURCHASE**

17 26. In connection with their telemarketing of merchandise,
18 Defendants have induced consumers to purchase goods by making
19 false or misleading statements (a) that they won a free laptop
20 computer, digital video camera, or other electronic device of
21 commensurate value; and (b) about the identity, brand names,
22 musical content, or other material characteristics of their goods.

23 27. Defendants have thereby violated Section 310.3(a)(4) of
24 the Original and Amended Telemarketing Sales Rule, 16 C.F.R.
25 § 310.3(a)(4).

26 **CONSUMER INJURY**

27 28. Consumers throughout the United States have suffered and
28 continue to suffer substantial monetary loss as a result of

1 Defendants' unlawful acts or practices. In addition, Defendants
2 have been unjustly enriched as a result of their unlawful
3 practices. Absent injunctive relief by this Court, Defendants are
4 likely to continue to injure consumers, reap unjust enrichment,
5 and harm the public interest.

6 **THIS COURT'S POWER TO GRANT RELIEF**

7 29. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b),
8 empowers this Court to grant injunctive and such other relief as
9 the Court may deem appropriate to halt and redress violations of
10 the FTC Act. The Court, in the exercise of its equitable
11 jurisdiction, may award other ancillary relief, including but not
12 limited to, rescission of contracts and restitution, and the
13 disgorgement of ill-gotten gains, to prevent and remedy injury
14 caused by Defendants' law violations.

15 30. Section 19 of the FTC Act, 15 U.S.C. § 57b, and Section
16 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b), authorize this
17 Court to grant such relief as the Court finds necessary to halt
18 and redress injury to consumers or other persons resulting from
19 Defendants' violations of the TSR, including the rescission of
20 contracts and restitution, and disgorgement of ill-gotten gains.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff Federal Trade Commission, pursuant to
23 Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and
24 57(b), and Section 6(b) of the Telemarketing Act, 15 U.S.C.
25 § 6105(b), and the Court's own equitable powers, requests that
26 this Court:

27 1. Award plaintiff such temporary and preliminary
28 injunctive and ancillary relief as may be necessary to avert the

1 likelihood of consumer injury during the pendency of this action
2 and to preserve the possibility of effective final relief,
3 including, but not limited to, temporary and preliminary
4 injunctions and an order freezing assets;

5 2. Permanently enjoin Defendants from violating the FTC Act
6 and the TSR as alleged herein;

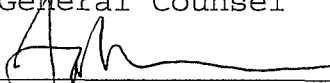
7 3. Award such equitable relief as the Court finds necessary
8 to redress injury to consumers resulting from Defendants'
9 violations of Section 5(a) of the FTC Act and the TSR, including
10 but not limited to, rescission of contracts and restitution, and
11 the disgorgement of ill-gotten gains by Defendants; and

12 4. Award Plaintiff the costs of bringing this action and
13 such other equitable relief as the Court may determine to be just
14 and proper.

15
16 Dated: April 25, 2005

Respectfully submitted,

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