

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

FEDERAL TRADE COMMISSION,
600 Pennsylvania Ave., N.W.
Washington, DC 20580

Plaintiff,

v.

**ONE OR MORE UNKNOWN PARTIES
MISREPRESENTING THEIR AFFILIATION
WITH THE MAKING HOME
AFFORDABLE PROGRAM,**

Defendants.

Civil Case No.

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

Plaintiff, the Federal Trade Commission (“FTC”), for its Complaint alleges:

1. The FTC brings this action under Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), to obtain temporary, preliminary, and permanent injunctive relief, rescission or reformation of contracts, restitution, disgorgement of ill-gotten monies, and other equitable relief for Defendant(s)’ acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a). Defendant(s) pay money to providers of Internet search engines so that Defendant(s)’ advertisements appear prominently in search results when a consumer searches for Making Home Affordable, a program of the United States government to help eligible homeowners refinance or modify their loans to obtain affordable payments. Defendant(s)’ advertisements conspicuously display the website address “makinghomeaffordable.gov”, but

consumers who click on this advertised hyperlink are not directed to the official website for the Making Home Affordable program, www.makinghomeaffordable.gov, but rather are brought to websites that solicit applicants for paid loan modification services. The identity of the Defendant(s) is not known because neither the advertisements they place in Internet search results nor the websites to which the advertisements direct consumers identify the person(s) who placed the advertisements.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a), 53(b).

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

PLAINTIFF

4. The FTC is an independent agency of the United States government created by statute. 15 U.S.C. §§ 41 - 58. The FTC 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.

5. The FTC is authorized to 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 and disgorgement. 15 U.S.C. §§ 53(b), 56(a), and 57b.

DEFENDANTS

6. Defendant(s) are one or more individuals or entities whose identities and addresses are unknown to the Commission at this time. The Defendant(s) transact business in

the District of Columbia. At all times material to this Complaint, acting alone or in concert with others, the Defendant(s) have advertised, marketed, distributed, and/or sold home loan modification services to consumers throughout the United States.

COMMERCE

7. At all times relevant to this Complaint, Defendant(s) 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.

THE FEDERAL GOVERNMENT’S EFFORTS TO ASSIST HOMEOWNERS

8. In the response to the nation’s mortgage crisis, the federal government has introduced and widely publicized a number of federal mortgage loan modification programs aimed at assisting distressed homeowners whose mortgage loans have become unaffordable.

9. In the past year, two United States Presidents, the Department of the Treasury, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the Department of Housing and Urban Development (“HUD”), among other federal authorities, have announced these federal mortgage loan modification programs.

10. Additionally, HUD has designated thousands of HUD-approved non-profit housing counseling agencies to provide assistance to consumers who are at risk of foreclosure or falling behind on their mortgage payments. These HUD-approved housing counseling agencies provide services at no cost to homeowners, negotiating with lenders to make homeowners’ mortgage loans more affordable. To publicize these services, HUD has engaged in a substantial public education campaign, including a designated toll-free number and joint efforts with the Treasury Department and other federal agencies.

11. On February 18, 2009, President Barack Obama announced the Making Home Affordable program, a comprehensive plan to stabilize the United States housing market. On March 8, 2009, the Administration published program guidelines and authorized servicers to begin modifications and refinancings under the plan immediately. On March 19, 2009, the Administration launched the website www.makinghomeaffordable.gov to provide consumers with information about the Making Home Affordable program and tools to determine their eligibility to participate in the program.

DEFENDANT(S)' BUSINESS ACTIVITIES

12. Since at least April 2009, Defendant(s) have solicited consumers to seek home loan modifications or other financial services through advertisements placed on Internet search result web pages (“results pages”).

13. Defendant(s) purchase preferred placement for their advertisements on the results pages provided by Internet search engines, including www.yahoo.com, www.msn.com, www.altavista.com and www.alltheweb.com. As a result, Defendant(s)' advertisements typically appear at the top of, or in some other prominent location on, the results pages, with a designation of “sponsored results” or “sponsored sites” and a shaded background sometimes added by the search engine provider.

14. Defendant(s) pay search engine providers to place their advertisements in the results page when consumers search for “making home affordable” or similar terms.

15. The advertisements that Defendant(s) select for display to consumers who search for “making home affordable” make it appear that the advertisements are links to the official website of the Making Home Affordable program or are otherwise affiliated with the United States government. Examples of Defendant(s)' advertisements include:

MakingHomeAffordable.gov - makinghomeaffordable.gov

Sponsored sites

Making Your Home Affordable. Let Us Fight For You And Save Your **Home**.

and

Makinghomeaffordable.gov

Making Your Home Affordable. Let Us Fight For You And Save Your **Home**.

www.howcanistopaforeclosure.com

16. Consumers who click on the hyperlink labeled "MakingHomeAffordable.gov" in Defendant(s)' advertisements are directed to various Internet websites that offer home loan modification or foreclosure relief services. The websites require consumers to enter personal identifying and confidential financial information prior to consultation with a loan modification or foreclosure rescue specialist. The operators of these websites either offer paid home loan modification or foreclosure relief services themselves or sell consumers' confidential information to persons who sell such paid services.

17. Neither Defendant(s) nor the operators of the websites to which Defendant(s)' advertisements lead consumers are part of or affiliated with the United States government or the Making Home Affordable program. Although the website www.makinghomeaffordable.gov offers free information and counseling about the Making Home Affordable program, Defendant(s)' advertisements direct consumers to persons seeking payment for purported loan modification services.

18. The placement of Defendant(s)' advertisements in responses to Internet searches for "making home affordable" and similar terms, and the inclusion in the text of such advertisements of "makinghomeaffordable.gov" is likely to mislead consumers who are attempting to obtain information about the Making Home Affordable program. Although Defendant(s) sometimes include a second website address on their advertisements, this website

is displayed in a smaller font and less prominently than makinghomeaffordable.gov and is inadequate to dispel the overall impression that the site advertised is affiliated with the United States government program.

VIOLATIONS OF THE FTC ACT

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

20. Misrepresentations or deceptive omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

Count I

Misrepresentations Concerning Government Status

21. In numerous instances in connection with the advertising, marketing, promotion, offering for sale, or sale of home mortgage loan modification services, Defendant(s) represent, directly or indirectly, expressly or by implication, that:

- A. Defendant(s) operate www.makinghomeaffordable.gov; and
- B. Defendant(s) are the United States government or are affiliated with the United States government.

Such representations are material to consumers seeking mortgage relief.

22. In truth and in fact:
- A. Defendant(s) do not operate www.makinghomeaffordable.gov; and
 - B. Defendant(s) are not the United States government and are not affiliated with the United States government.

23. Therefore, Defendant(s)' representations as set forth in Paragraph 21 of this Complaint 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).

CONSUMER INJURY

24. Consumers likely have suffered and will continue to suffer substantial injury as a result of Defendant(s)' violations of the FTC Act. In addition, Defendant(s) have been unjustly enriched as a result of their unlawful acts or practices. Absent injunctive relief by this Court, Defendant(s) are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

25. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and such other relief as the Court may deem appropriate to halt and redress violations of the FTC Act. The Court, in the exercise of its equitable jurisdiction, may award ancillary relief, including rescission of contracts and restitution, and the disgorgement of ill-gotten monies, to prevent and remedy any violation of any provision of law enforced by the FTC.

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:

A. 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 by entering a temporary restraining order and a preliminary injunction.

B. Enter a permanent injunction to prevent future violations of the FTC Act by Defendant(s).

C. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendant(s)' 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.

D. 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.

Respectfully submitted,

DAVID C. SHONKA
Acting General Counsel

Dated: May 14, 2009


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