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LONG ISLAND OFFICE

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

**CLASSIC CLOSEOUTS, LLC, a limited
liability company, also d/b/a
CLASSICCLOSEOUTS.COM,**

and

**DANIEL J. GREENBERG, individually, as
an officer of CLASSIC CLOSEOUTS,
LLC, and d/b/a THIRDFREE.COM,**

Defendants.

(S.F.)

Civ. No.

**WEXLER &
BOYLE, P.C.**

**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 Defendants' acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

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

PLAINTIFF

4. Plaintiff 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 and deceptive acts or practices in or affecting commerce. 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).

DEFENDANTS

5. Defendant Classic Closeouts, LLC (“CCL”) is a Nevada limited liability company with its principal place of business at 110 West Graham Avenue, Hempstead, NY 11550. CCL also was incorporated as a New York limited liability company. CCL transacts or has transacted business in this District and throughout the United States. CCL also does business as Classiccloseouts.com.
6. Defendant Daniel Greenberg (“Greenberg”) is the president, CEO, sole owner, and managing member of CCL. He also does business as ThirdFree.com (“ThirdFree”), a business related to CCL, and has represented that he is CEO of ThirdFree. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of CCL and ThirdFree, including the acts and practices set forth in this Complaint. Defendant Greenberg resides in and, in connection with the matters alleged herein, transacts or has transacted business in this District and throughout the United States.

COMMERCE

7. 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

8. Defendants are sellers of consumer merchandise via the Internet since at least 2003, through their Web site, Classiccloseouts.com.
9. Numerous consumers who purchased items online from Classiccloseouts.com provided their credit card or debit card information to Classiccloseouts.com solely for the purpose of making their intended purchases.
10. Defendants made the following representations on Classiccloseouts.com:

“We guarantee that every online transaction you make at Classiccloseouts.com will be 100% safe. This means you pay nothing if unauthorized charges are made to your card as a result of shopping at our online store.”
11. Despite these representations, Defendants repeatedly posted unauthorized charges to the credit and debit card accounts of consumers who had shopped at Classiccloseouts.com.
12. From approximately June 2008 through at least September 2008, using the consumers’ previously provided credit card or debit card information from several months or even years earlier, Defendants charged thousands of consumers’ credit cards or debited consumers’ bank accounts on one or more occasions in amounts ranging from \$29.99 to \$79.99 per occasion. Defendants charged the credit cards or debited the bank accounts of some consumers who had made no purchase from Classiccloseouts.com for one or more years.

13. In numerous instances, consumers did not give any entity related to Defendants authority to charge their credit cards or debit their bank accounts.
14. In numerous instances, Defendants' unexpected credit card charges or bank account debits have caused consumers to incur costly credit card nonpayment or late fees or bank overdraft fees.
15. Numerous consumers who called Defendants to complain about and dispute the unauthorized charges or debits were unable to reach a representative, and their telephone messages were not returned.
16. Numerous consumers who submitted complaints to Defendants via their Web site received no responses to their complaints.
17. Frequently, consumers who were unable to reach Defendants contacted their credit card company or their bank seeking removal of the unauthorized charges or debits.
18. Often, upon receiving notice from consumers that Defendants' credit card charges were unauthorized, consumers' credit card companies charged back the unauthorized amounts to Defendants. Similarly, upon receiving notice from consumers that Defendants' debits to their bank accounts were unauthorized, consumers' banks often credited the consumers' accounts for the unauthorized debit amounts.
19. In numerous instances, Defendants then sent letters to consumers' credit card companies, objecting to consumers receiving credits for the unauthorized charges. In these letters, Defendants claimed that these consumers accepted an e-mailed offer from CCL's "sister company," ThirdFree, to join CCL's frequent shopping club, and thus the consumers were not entitled to credits.
20. In numerous instances, complaining consumers' credit card companies have reapplied the

purported CCL frequent shopping club charges, despite the consumers' protestations that these charges to their credit cards were unauthorized.

21. In all known instances, complaining consumers have denied receiving any e-mail offer for CCL's frequent shopping club, and thus denied accepting any such offer. In many instances, consumers first learned of the CCL frequent shopping club after they complained about Defendants' unauthorized charges to their credit card account or unauthorized debits to their bank account. In many instances, consumers only purchased one item from CCL and that purchase was months or years prior to the unauthorized charges that were placed on their cards.
22. In numerous instances, Defendants do not issue refunds or credits to consumers and do not reimburse consumers for the credit card late fees or bank overdraft fees caused by Defendants' unauthorized credit card charges or bank account debits.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

23. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits "unfair or deceptive acts or practices in or affecting commerce."
24. Acts or practices are unfair under Section 5 of the FTC Act if they cause substantial injury to consumers that consumers cannot reasonably avoid and that is not outweighed by countervailing benefits to consumers or to competition. 15 U.S.C. § 45(n).

COUNT I

25. In numerous instances, Defendants have charged consumers' credit cards or debited consumers' bank accounts without authorization, sometimes multiple times.
26. Defendants' practices of charging consumers' credit cards or debiting consumers' bank accounts without authorization have caused or are likely to cause, substantial injury to

consumers that is not reasonably avoidable by consumers and is not outweighed by countervailing benefits to consumers or competition.

27. Therefore, Defendants' practices as alleged in Paragraph 25 of this Complaint constitute unfair acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

CONSUMER INJURY

28. Consumers have suffered and will continue to suffer substantial injury as a result of Defendants' violations of the FTC Act. In addition, Defendants have been unjustly enriched as a result of their unlawful acts or 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

29. 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 temporary and 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, an order freezing assets, appointment of a receiver, and immediate access to Defendants' business premises;

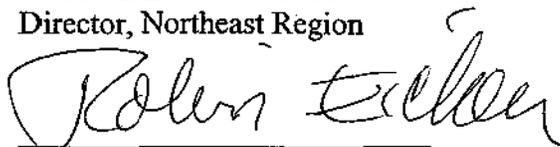
- B. Enter a permanent injunction to prevent future violations of the FTC Act by Defendants;
- C. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act, including but not limited to, rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies; and
- 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.

Dated: June 23, 2009

Respectfully submitted

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Acting General Counsel

LEONARD L. GORDON
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