

**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**; **IVAL GROUP, LLC**, a limited liability company; **AYC HOLDING CORP.**; **110 WEST GRAHAM AVENUE CORP.**; **YGC ENTERPRISES, INC.**; **DANIEL J. GREENBERG**, individually, as an officer of **CLASSIC CLOSEOUTS, LLC**, and d/b/a **THIRDFREE.COM**, and as an officer or principal of **IVAL GROUP, LLC**, **AYC HOLDING CORP.**, **110 WEST GRAHAM AVENUE CORP.**, and **YGC ENTERPRISES, INC.**; **HAZEN NY INC.**, also known as **HAZEN NY**; and **JONATHAN BRUK**, also known as **JONATHAN J. BROOK** and **YOCHANON BRUK**, individually, as an officer of **HAZEN NY INC.**

Defendants, and

STEPHANIE H. GREENBERG,

Relief Defendant.

Civ. No. 2:09 2692 (LDW) (ETB)

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

Plaintiff, the Federal Trade Commission (“FTC”) for its Second Amended 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 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).

2. Defendants have been involved in the selling of discounted clothing and personal items via the Internet. As set forth herein, Defendant Daniel Greenberg and close business associate Jonathan Bruk, as well as the companies these individuals own and control, have engaged in an unlawful and fraudulent scheme to charge consumers' credit cards or debit their bank accounts without consumers' authorization and without consumers purchasing any merchandise. To further their illicit scheme, when consumers disputed the unauthorized charges with their credit card companies and banks, certain of the Defendants falsely asserted that the charges were valid, causing additional harm to consumers.
3. From approximately June 2008, this unlawful and fraudulent scheme had been spearheaded by Daniel Greenberg and Classic Closeouts, a company he owns and controls. However, Daniel Greenberg continued to use other companies he controls, along with his business associate, as well as the companies they own or control, to perpetuate this scheme, evade liability, and hide assets. In short, Defendants formed a common enterprise that shifted monies and deflected responsibility among a series of interrelated companies as they continued to injure consumers.

JURISDICTION AND VENUE

4. 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).

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

PLAINTIFF

6. 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

7. 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, where it has sold discounted clothing and related merchandise, often costing under \$20 per item.
8. Defendant IVAL Group, LLC (“IVAL”) is a New York limited liability company with an address at 110 West Graham Avenue, Hempstead, NY 11550. IVAL has performed the billing operations for Classiccloseouts.com from approximately October 2008. IVAL transacts or has transacted business in this District and throughout the United States. IVAL also has operated Ivalgroup.com.

9. Defendant AYC Holding Corp. (“AYC”) is a New York corporation with an address at 110 West Graham Avenue, Hempstead, NY 11550. AYC sells consumer merchandise via the Internet through its websites. AYC has received more than one million dollars from CCL through October 2008. AYC transacts or has transacted business in this District and throughout the United States. AYC also has operated AYCHOLDINGS.COM and Dannysbargains.com.
10. Defendant 110 West Graham Avenue Corp. (“110 West Graham”) is a New York corporation with an address at 110 West Graham Avenue, Hempstead, NY 11550. 110 West Graham maintained a lease for CCL’s business premises located at 110 West Graham Avenue and received rental payments from CCL. 110 West Graham transacts or has transacted business in this District.
11. Defendant YGC Enterprises, Inc. (“YGC”) is a New York corporation with an address at 110 West Graham Avenue, Hempstead, NY 11550. YGC currently owns the Classiccloseouts.com trademark. Daniel Greenberg owns or controls YGC and is a signatory on YGC’s bank account. YGC transacts or has transacted business in this District and throughout the United States.
12. Defendant Daniel J. Greenberg (“Daniel 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. Daniel Greenberg is an officer, principal and/or owner of IVAL, AYC, 110 West Graham, and YGC. At all times material to this Complaint, acting alone or in concert with others, Defendant Daniel Greenberg has formulated, directed, controlled, had the authority to control, or participated in the acts and practices set forth in this Complaint. Daniel

Greenberg resides in and, in connection with the matters alleged herein, transacts or has transacted business in this District and throughout the United States.

13. Defendant Hazen NY Inc. (“Hazen”) is a New York corporation with an address at 110 West Graham Avenue, Hempstead, NY 11550, the same address where CCL, IVAL, AYC, 110 West Graham and YGC are located. In addition, Hazen has an address in Brooklyn, NY that is also listed as Defendant Jonathan Bruk’s residential address. Hazen transacts or has transacted business in this District and throughout the United States. Upon information and belief, Hazen also does business as Hazen NY. Hazen had operated Hazenny.com. CCL has paid Hazen substantial sums of money.
14. Defendant Jonathan Bruk, also known as Jonathan J. Brook and Yochanon Bruk (“Bruk”), is a business associate of Daniel Greenberg. Bruk has served as the Warehouse Manager for CCL and, through October 2008, CCL paid Bruk substantial sums of money. Bruk also served as the Credit Manager for IVAL. Apart from his multiple affiliations with companies owned by Daniel Greenberg, Bruk is the President of Hazen. 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 set forth in this Complaint. Defendant Bruk resides in and, in connection with the matters alleged herein, transacts or has transacted business in this District and throughout the United States.
15. Relief Defendant Stephanie H. Greenberg (“Stephanie Greenberg”) is married to Defendant Daniel Greenberg. Stephanie Greenberg received significant sums of money and benefits from CCL that were derived unlawfully from payments by consumers as a

consequence of the acts and practices complained of herein. Stephanie Greenberg resides in the Eastern District of New York.

COMMON ENTERPRISE

16. Defendants CCL, IVAL, AYC, 110 West Graham, YGC, and Hazen have operated together as a common enterprise while engaging in the unfair acts and practices alleged below. These entities have been commonly controlled by one or more of the individual Defendants, operated from the same business locations, and engaged in a common scheme of unauthorized billing to defraud consumers. Defendants CCL, AYC, and Hazen have commingled funds. The common enterprise has transacted business in this District, and a substantial part of the events giving rise to the claims asserted herein have occurred in this District. Individual Defendants Daniel Greenberg, and Jonathan Bruk have formulated, directed, controlled or had authority to control, or participated in the acts and practices of the corporate Defendants that comprise the common enterprise.

COMMERCE

17. 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.

BUSINESS PRACTICES OF DEFENDANTS

18. From approximately June 2008 and continuing through at least late 2008, Defendants have engaged in an unlawful and fraudulent scheme to charge consumers’ credit cards or debit consumers’ bank accounts without authorization and without consumers receiving any merchandise. Each of the Defendants has participated in this scheme by engaging in one or more of the following acts: (i) posting unauthorized charges to consumers’ credit

cards and debit card accounts; (ii) making false representations to credit card companies and financial institutions when consumers sought to dispute these unauthorized charges; and (iii) assisting one or more of the other Defendants by funneling and concealing monies derived from the aforementioned unlawful practices.

19. Since June 2008, more than a thousand consumer victims have filed complaints with the FTC, the Better Business Bureau Serving Metropolitan New York, the New York Attorney General, other Attorneys General, and private organizations regarding unauthorized charges posted by CCL and Daniel Greenberg and their false assertions to banks, financial institutions, and credit card companies.
20. Notwithstanding the mountain of complaints to both public and private agencies, Daniel Greenberg and CCL did not cease their fraudulent scheme. Rather, beginning in or around October 2008, these illegal activities merely shifted (at least in part) to other companies controlled by Daniel Greenberg and/or Bruk, namely YGC and IVAL. In addition, revenue generated by CCL has been funneled to at least two companies owned by Daniel Greenberg (AYC and 110 West Graham) and another company owned by Bruk (Hazen).
21. Defendants CCL and Daniel Greenberg have been selling consumer merchandise via the Internet since at least 2003, through their Web site, Classiccloseouts.com.
22. 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.
23. Defendants CCL and Daniel Greenberg 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.”

24. Despite these representations, Defendants CCL and Daniel Greenberg repeatedly posted unauthorized charges to the credit and debit card accounts of consumers who had shopped at Classiccloseouts.com.
25. Using the consumers’ previously provided credit card or debit card information from several months or even years earlier, Defendants CCL and Daniel Greenberg 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 CCL and Daniel Greenberg 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.
26. In numerous instances, consumers did not give any entity related to Defendants authority to charge their credit cards or debit their bank accounts.
27. In numerous instances, these unexpected credit card charges or bank account debits have caused consumers to incur costly credit card nonpayment or late fees or bank overdraft fees.
28. Numerous consumers who called Defendant CCL to complain about and dispute the unauthorized charges or debits were unable to reach a representative, and their telephone messages were not returned.
29. Numerous consumers who submitted complaints to Defendants CCL and Daniel Greenberg via their Web site received no responses to their complaints.

30. Frequently, consumers who were unable to reach Defendants CCL or Daniel Greenberg contacted their credit card company, bank, or financial institutions seeking removal of the unauthorized charges or debits.
31. Often, upon receiving notice from consumers that Defendant CCL's credit card charges were unauthorized, consumers' credit card companies charged back the unauthorized amounts to CCL. Similarly, upon receiving notice from consumers that CCL's debits to their bank accounts were unauthorized, consumers' banks and financial institutions often credited the consumers' accounts for the unauthorized debit amounts.
32. In numerous instances, Defendants CCL and Daniel Greenberg responded to financial institutions' inquiries regarding the charges by sending letters to consumers' credit card companies, banks, and financial institutions. In these letters, CCL and Daniel Greenberg objected to consumers receiving credits for the unauthorized charges, claimed that these consumers accepted an e-mailed offer from CCL's "sister company," ThirdFree, to join CCL's frequent shopping club, and that the consumers were therefore not entitled to credits.
33. Defendants CCL and Daniel Greenberg also provided this false explanation to, among other entities, an organization that certifies the privacy practices of their Internet licensees, which contacted CCL and Daniel Greenberg in connection with hundreds of complaints it received concerning unauthorized charges from CCL. In addition, Defendant Brook sent emails to this organization regarding these unauthorized charges using the email address brook@classiccloseouts.com.
34. In numerous instances, complaining consumers' credit card companies, banks, and financial institutions reapplied the purported CCL frequent shopping club charges,

despite the consumers' protestations that these charges to their credit cards and debit accounts were unauthorized.

35. 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 CCL's 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.
36. In numerous instances, CCL has not issued refunds or credits to consumers and has not reimbursed consumers for the credit card late fees or bank overdraft fees caused by CCL's unauthorized credit card charges or bank account debits.
37. In or around October 2008, IVAL, which Daniel Greenberg owns and whose Credit Manager is Jonathan Bruk, began performing the billing operations for Classiccloseouts.com.
38. At or around the beginning of 2009, YGC became the owner of the Classiccloseouts.com trademark.
39. Thus, with the participation of IVAL, YGC, and Jonathan Bruk, the common enterprise continued conducting business as Classiccloseouts.com.
40. As consumers continued to suffer injury, the Individual Defendants funneled substantial sums of money from CCL to their other companies from 2008 through 2009, including AYC, Hazen, and 110 West Graham.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

41. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits “unfair or deceptive acts or practices in or affecting commerce.”
42. 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

43. In numerous instances, Defendants have charged consumers’ credit cards or debited consumers’ bank accounts without authorization, sometimes multiple times.
44. 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.
45. Therefore, Defendants’ practices as alleged in Paragraph 43 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

46. 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

47. 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. Enter a permanent injunction to prevent future violations of the FTC Act by Defendants;
- B. 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;
- C. Award such relief against Relief Defendant Stephanie Greenberg as the Court finds necessary to protect and return funds and other property that were derived from Defendants' violations of Section 5 of the FTC Act, including an order to disgorge ill-gotten gains and proceeds that she has received and that relate to the acts and practices complained of herein, and an order imposing a constructive trust on such gains or proceeds; and

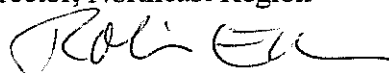
- D. Award Plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

Dated: December 9, 2010

Respectfully submitted,

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