

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

RECEIVED

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THOMAS G. BRUTON
CLERK, U.S. DISTRICT COURT

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

AFD ADVISORS, LLC, a Wisconsin limited
liability company, also d/b/a AFD MEDICAL
ADVISORS;

AMG ASSOCIATES, LLC, a Delaware limited
liability company, also d/b/a AMG MEDICAL
and AMG MEDICAL ASSOCIATES;

PARK 295 CORP., a New York corporation;

CAL CONSULTING, LLC, a Georgia limited
liability company, also d/b/a CLINACALL;

9262-2182 QUÉBEC INC., a Canadian
corporation;

9210-7838 QUÉBEC INC., a Canadian
corporation;

AARON F. DUPONT, individually and as an
owner, member, or managing member of AFD
ADVISORS, LLC, and AMG ASSOCIATES,
LLC;

CHARLES A. LAMBORN, III, individually and
as an owner, member, or managing member of
CAL CONSULTING, LLC,

STEPHANE SCEBBA, individually and as an
owner, officer, or director of 9262-2182
QUÉBEC INC.; and

Case No.

13cv6420

Judge Zagel

Mag. Judge Valdez

FAWAZ SEBAI, a/k/a FRANK SEBAG,
individually and as an owner, officer, or director
of 9210-7838 QUÉBEC INC.;

Defendants.

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 Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, and the Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing Act"), 15 U.S.C. §§ 6101-6108, to obtain temporary, preliminary, and permanent injunctive relief, rescission or reformation of contracts, restitution, the refund of monies paid, 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), and in violation of the FTC's Trade Regulation Rule entitled "Telemarketing Sales Rule" ("TSR"), 16 C.F.R. Part 310.

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), 57b, 6102(c), and 6105(b).

3. Venue is proper in this District under 28 U.S.C. §§1391(b)(2), (b)(3), (c)(2), (c)(3), 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 enforces 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. The FTC also

enforces the Telemarketing Act, 15 U.S.C. §§ 6101-6108. Pursuant to the Telemarketing Act, the FTC promulgated and enforces the TSR, 16 C.F.R. Part 310, which prohibits deceptive and abusive telemarketing acts or practices.

5. The FTC is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act and the TSR and to secure such equitable relief as may be appropriate in each case, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies. 15 U.S.C. §§ 53(b), 56(a)(2)(A)-(B), 57b, 6102(c), and 6105(b).

DEFENDANTS

6. Defendant AFD Advisors, LLC (“AFD”), also doing business as AFD Medical Advisors, is a Wisconsin limited liability company with its registered address at 3111 Sandgate Court, Weston, Wisconsin 54476, and its principal place of business at 5633 Highway 10 East, #384, Stevens Point, Wisconsin 54482. AFD transacts or has transacted business in this district and throughout the United States.

7. Defendant AMG Associates, LLC (“AMG”), also doing business as AMG Medical and AMG Medical Associates, is a Delaware limited liability company with its registered address at 1201 North Orange Street, Suite 732, Wilmington, Delaware 19801, and its principal place of business at 1201 North Orange Street, Suite 700 #7297, Wilmington, Delaware 19801. AMG transacts or has transacted business in this district and throughout the United States.

8. Defendant Park 295 Corp. (“Park 295”) is a New York corporation with its registered address and principal place of business at 350 Fifth Avenue, Suite 4810, New York,

New York 10118. Park 295 transacts or has transacted business in this district and throughout the United States.

9. Defendant CAL Consulting, LLC (“CAL Consulting”), also doing business as Clinacall, is a Georgia limited liability company with its registered address and principal place of business at 7025 Coffield Court, Cumming, Georgia 30041. CAL Consulting transacts or has transacted business in this district and throughout the United States.

10. Defendant 9262-2182 Québec Inc. (“9262-2182”) is a Canadian corporation with its registered address at 3420 Boulevard Sainte-Rose, Laval (Québec) H7P 4K7, Canada. 9262-2182 transacts or has transacted business in this district and throughout the United States.

11. Defendant 9210-7838 Québec Inc. (“9210-7838”) is a Canadian corporation with its registered address at 213-1220 rue De Beauharnois O, Montréal (Québec) H4N 1J5, Canada. 9210-7838 transacts or has transacted business in this district and throughout the United States.

12. Defendant Aaron F. Dupont (“Dupont”) is or was an owner, member, and/or managing member of Defendants AFD and AMG. 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 Dupont, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

13. Defendant Charles A. Lamborn, III (“Lamborn”), is or was an owner, member, and/or managing member of Defendant CAL Consulting. 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 Lamborn, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

14. Defendant Stephane Scebba (“Scebba”) is or was an owner, manager, secretary, and/or president of Defendant 9262-2182. 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 Scebba, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

15. Defendant Fawaz Sebai (“Sebai”), a/k/a Frank Sebag, is or was an owner, secretary, treasurer, and/or president of Defendant 9210-7838. 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 Sebai, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

COMMERCE

16. At all times material 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 ACTIVITIES

Defendants Solicit Consumers by Telemarketing

17. Since at least September 2012, and continuing thereafter, Defendants have engaged in a deceptive telemarketing campaign. Defendants, acting alone or in concert with

others, have deceptively marketed and sold a medical discount plan primarily to elderly and infirm consumers throughout the United States.

18. To induce consumers to purchase their medical discount plan, Defendants pretend to be affiliated with a United States government program, such as Medicare or Social Security, or the consumer's own medical insurance provider. Defendants represent that their medical discount plan will provide consumers with substantial discounts on their prescription drugs. In truth, Defendants are not affiliated with any government program, and their medical discount plan typically does not provide consumers with any benefits whatsoever. The sole purpose of Defendants' deceptive telemarketing campaign is to obtain consumers' bank account information so that Defendants can debit funds from consumers' bank accounts.

Defendants' Affiliation Claims

19. Defendants typically begin their telemarketing calls by leading consumers to believe that they are calling from or about a United States government program, such as Medicare or Social Security. In some instances, the telemarketers tell consumers directly that they are calling from Medicare or Social Security. In other instances, Defendants provide a company name, but then lead consumers to believe that the company is affiliated with Medicare or Social Security, or the consumer's own medical insurance provider.

20. Defendants suggest that consumers have previously dealt with Defendants and that the call relates to this existing relationship. For instance, the telemarketers often indicate that the call relates either to the continuation of consumers' Medicare or Social Security benefits, or to a new prescription drug discount card offered under consumers' existing insurance.

21. However, Defendants are not calling consumers from or about a United States government program, nor are they affiliated with Medicare or Social Security, or the consumer's

own medical insurance provider. Defendants also have no previous or existing relationship with consumers. Instead, Defendants are cold-calling consumers from a call center in Montréal, Canada, or other locations outside the United States.

Defendants' Savings Claims

22. After misrepresenting their affiliation, Defendants then offer consumers a medical discount plan that consists of a purported prescription drug discount card. Defendants tell consumers that the prescription drug discount card will provide them with substantial savings on their prescription drug costs. For example, Defendants sometimes represent that consumers will save as much as 75 percent off their prescription drug costs. In other instances, Defendants tell consumers that they can receive prescription drugs for free under Defendants' plan.

23. Defendants often lead consumers to believe that the prescription drug discount card is required for consumers to continue receiving Medicare, Social Security, or medical insurance benefits. In some instances, the telemarketers suggest that the card is part of consumers' Medicare coverage.

24. In some instances, Defendants quote consumers a one-time fee, typically \$299, to obtain Defendants' prescription drug discount card. Defendants often represent that this fee is a discounted price from what consumers "were paying before." In other instances, Defendants do not make clear that consumers must pay a fee to obtain Defendants' prescription drug discount card.

25. Defendants ask consumers to "verify" their bank account information so that Defendants can "confirm we are speaking to the correct individual" and "confirm you have been fully covered." Many consumers thus provide their bank account information to Defendants

without realizing that that information subsequently will be used to debit the one-time fee from their accounts.

Defendants' Verification Recordings

26. After obtaining consumers' bank account information, Defendants attempt to obtain recorded verifications that purport to demonstrate consumers' agreement to purchase and be charged for Defendants' prescription drug discount card. During the recorded verifications, Defendants' telemarketers frequently contradict what consumers were told during unrecorded portions of the call about Defendants' purported affiliation and the savings provided by Defendants' prescription drug discount card.

27. In numerous instances, prior to the start of the recording, Defendants' telemarketers tell consumers how to respond to the verification questions. Consumers are instructed to answer with a clear "yes" or "no," and not to interrupt or to ask questions. If they do, the recording will have to be started again. Defendants' purpose is to obtain a "clean" verification recording that can later be used against consumers who contest that they agreed to purchase anything from Defendants.

Defendants' Demand Drafts

28. Upon obtaining the recorded verification, Defendants' debit consumers' bank accounts using "demand drafts," also called "remotely-created checks." These demand drafts have the appearance of conventional checks, except that they are not drafted or signed by the consumers from whose accounts they are drawn. The signature lines on the drafts indicate that the drafts purportedly have been authorized by consumers, stating: "This draft authorized by your depositor **No Signature Required.**"

29. The demand drafts are made payable to a business name used by Defendants, such as “AFD Medical Advisors,” “AMG Associates,” or “Clinacall.” The “memo” line on the drafts typically includes a phone number and identification number.

Defendants’ Medical Discount Plan Package

30. Once consumers’ bank accounts have been debited, some, but not all, consumers receive a package in the mail from Defendants. Typically included in the package is a purported prescription drug discount card, such as a “YourRxCard” or “Rxrelief” card, and a list of participating pharmacies that purportedly accept the card.

31. The prescription drug discount cards that Defendants send to consumers are available to any consumer, free of charge, on websites like www.yourrxcard.com or www.rxreliefcard.com. The cards typically provide no benefit to consumers who already are receiving government or private medical insurance benefits.

Defendants’ Abusive Telemarketing Practices

32. While telemarketing their program, Defendants, acting directly or through one or more intermediaries, have made numerous calls to telephone numbers on the National Do Not Call Registry.

33. In numerous instances, Defendants, acting directly or through one or more intermediaries, have initiated telemarketing calls that failed to disclose truthfully, promptly, and in a clear and conspicuous manner to the person receiving the call: the identity of the seller, that the purpose of the call is to sell goods or services, or the nature of the goods or services.

VIOLATIONS OF THE FTC ACT

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

35. Misrepresentations or deceptive omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act. 15 U.S.C. § 45(a).

COUNT ONE

36. In numerous instances in connection with the advertising, marketing, promotion, offering for sale, or sale of medical discount plans, Defendants have represented, directly or indirectly, expressly or by implication, that they are calling from, calling on behalf of, or are otherwise affiliated with, a government program such as Medicare or Social Security, or the consumer's medical insurance provider.

37. In truth and in fact, in numerous instances in which Defendants have made the representation set forth in Paragraph 36 of this Complaint, Defendants are not calling from, nor calling on behalf of, nor are they otherwise affiliated with, a government program such as Medicare or Social Security, or the consumer's medical insurance provider.

38. Therefore, Defendants' representation as set forth in Paragraph 36 of this Complaint is false and misleading and constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. §45(a).

COUNT TWO

39. In numerous instances in connection with the advertising, marketing, promotion, offering for sale, or sale of medical discount plans, Defendants have represented, directly or indirectly, expressly or by implication, that their medical discount plan will provide consumers with substantial discounts on prescription drugs.

40. In truth and in fact, in numerous instances in which Defendants have made the representation set forth in Paragraph 39 of this Complaint, Defendants' medical

discount plan does not provide consumers with substantial discounts on prescription drugs.

41. Therefore, Defendants' representation as set forth in Paragraph 39 of this Complaint is false and misleading and constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. §45(a).

THE TELEMARKETING SALES RULE

42. 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. The FTC adopted the original TSR in 1995, extensively amended it in 2003, and amended certain provisions thereafter. 16 C.F.R. Part 310.

43. Defendants are "seller[s]" and/or "telemarketer[s]" engaged in "telemarketing," and Defendants have initiated, or have caused telemarketers to initiate, "outbound telephone call[s]" to consumers to induce the purchase of goods or services, as those terms are defined in the TSR, 16 C.F.R. § 310.2(v), (aa), (cc), and (dd).

44. Under the TSR, an "outbound telephone call" means a telephone call initiated by a telemarketer to induce the purchase of goods or services or to solicit a charitable contribution. 16 C.F.R. § 310.2(v).

45. The TSR prohibits sellers and telemarketers from misrepresenting, directly or by implication, in the sale of goods or services, any of the following material information:

A. Any material aspect of the performance, efficacy, nature, or central characteristics of the goods or services that are the subject of a sales offer. 16 C.F.R. § 310.3(a)(2)(iii); and

B. A seller's or telemarketer's affiliation with, or endorsement or sponsorship by, any person or government entity. 16 C.F.R. § 310.3(a)(2)(vii).

46. The TSR, as amended in 2003, established a "do-not-call" registry (the "National Do Not Call Registry" or "Registry"), maintained by the FTC, of consumers who do not wish to receive certain types of telemarketing calls. Consumers can register their telephone numbers on the Registry without charge either through a toll-free telephone call or over the Internet at www.donotcall.gov.

47. 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 www.donotcall.gov, or by otherwise contacting law enforcement authorities.

48. The FTC allows sellers, telemarketers, and other permitted organizations to access the Registry over the Internet at www.telemarketing.donotcall.gov, to pay any required fee(s), and to download the numbers not to call.

49. The TSR prohibits sellers and telemarketers from initiating an outbound telephone call to telephone numbers on the Registry. 16 C.F.R. § 310.4(b)(1)(iii)(B).

50. The TSR requires telemarketers in an outbound telephone call to disclose truthfully, promptly, and in a clear and conspicuous manner, the following information:

- A. The identity of the seller;
- B. That the purpose of the call is to sell goods or services; and
- C. The nature of the goods or services.

16 C.F.R. § 310.4(d).

51. Pursuant to Section 3(c) of the Telemarketing Act, 15 U.S.C. § 6102(c), 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).

VIOLATIONS OF THE TELEMARKETING SALES RULE

COUNT THREE

52. In numerous instances, in connection with the telemarketing of goods and services, Defendants have misrepresented, directly or by implication, that they are calling from, calling on behalf of, or are otherwise affiliated with, a government program such as Medicare or Social Security, or the consumer's medical insurance provider.

53. Defendants' acts and practices, as described in Paragraph 52 above, are deceptive telemarketing acts or practices that violate the TSR, 16 C.F.R. § 310.3(a)(2)(vii).

COUNT FOUR

54. In numerous instances, in connection with the telemarketing of goods and services, Defendants have misrepresented, directly or by implication, that their medical discount plan will provide consumers with substantial discounts on prescription drugs.

55. Defendants' acts and practices, as described in Paragraph 54 above, are deceptive telemarketing acts or practices that violate the TSR, 16 C.F.R. § 310.3(a)(2)(iii).

COUNT FIVE

56. In numerous instances, in connection with telemarketing, Defendants have engaged, or caused a telemarketer to engage, in initiating 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 SIX

57. In numerous instances, in the course of telemarketing goods and services, Defendants have made, or have caused a telemarketer to make, outbound telephone calls in which the telemarketer failed to disclose truthfully, promptly, and in a clear and conspicuous manner to the person receiving the call:

- A. The identity of the seller;
- B. That the purpose of the call is to sell goods or services; and
- C. The nature of the goods or services.

58. Defendants' acts and practices, as described in Paragraph 57 above, are abusive telemarketing acts or practices that violate the TSR, 16 C.F.R. § 310.4(d).

CONSUMER INJURY

59. Consumers have suffered and will continue to suffer substantial injury as a result of Defendants' violations of the FTC Act and the TSR. 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

60. 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 any provision of law enforced by the FTC. The Court, in the exercise of its equitable jurisdiction, may award ancillary relief, including rescission or

reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies, to prevent and remedy any violation of any provision of law enforced by the FTC.

61. Section 19 of the FTC Act, 15 U.S.C. § 57b, and Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b), authorize this Court to grant such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the TSR, including the rescission or reformation of contracts, and the refund of money.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff FTC, pursuant to Sections 13(b) and 19 of the FTC Act, 15 U.S.C. § 53(b) and 57b, Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(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, including, but not limited to, temporary and preliminary injunctions, an order freezing assets, immediate access, and the appointment of a receiver;

B. Enter a permanent injunction to prevent future violations of the FTC Act and the TSR by Defendants;

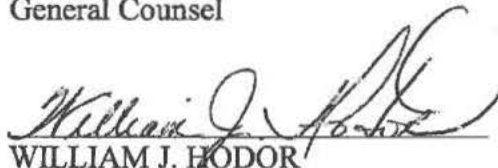
C. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act and the TSR, including, but not limited to, rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies;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

Respectfully submitted,

JONATHAN E. NUECHTERLEIN
General Counsel

Dated: September 9, 2013

A handwritten signature in black ink, appearing to read "William J. Hodor", is written over a horizontal line.

WILLIAM J. HODOR
THERESA M. McGREW
Federal Trade Commission
Midwest Region
55 West Monroe Street, Suite 1825
Chicago, Illinois 60603
(312) 960-5634 [telephone]
(312) 960-5600 [facsimile]
whodor@ftc.gov [e-mail, Hodor]
tmcgrew@ftc.gov [e-mail, McGrew]

Attorneys for Plaintiff
FEDERAL TRADE COMMISSION