

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FEDERAL TRADE COMMISSION,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO.
)	
MERCURY MARKETING OF DELAWARE, INC.,))	
a Pennsylvania corporation; and)	
)	
NEAL D. SAFERSTEIN, individually and as an)	
officer of the corporation.)	
)	
Defendants.)	

COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF

Plaintiff, the Federal Trade Commission (“Commission”), by its undersigned attorneys, alleges:

1. This is an action under Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), to secure injunctive and other equitable relief, including rescission of contracts, restitution, and disgorgement for Defendants' deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), in connection with the marketing and sale of Internet “web pages.”

JURISDICTION AND VENUE

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

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

PLAINTIFF

4. Plaintiff Federal Trade Commission is an independent agency of the United States government created by statute. 15 U.S.C. §§ 41-58. The Commission 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 Commission may initiate federal district court proceedings to enjoin violations of the FTC Act and to secure such equitable relief as may be appropriate in each case, including restitution for injured consumers. 15 U.S.C. § 53(b).

DEFENDANTS

5. Defendant Mercury Marketing of Delaware, Inc., is a Pennsylvania corporation with its offices and principal place of business located at 20 North Third Street, Philadelphia, Pennsylvania 19106. Mercury Marketing of Delaware, Inc., also does business as Mercury, Mercury Internet Services, MIS, Mercury Internet Services Wireless, GoInternet.net, and Mercury Marketing Technologies of Delaware. Mercury Marketing of Delaware, Inc., transacts or has transacted business in the Eastern District of Pennsylvania.

6. Defendant Neal D. Saferstein is owner, chief executive officer, secretary, and treasurer of Mercury Marketing of Delaware, Inc. At all times material to this complaint, acting alone or in concert with others, Saferstein has formulated, directed, controlled, or participated in the acts and practices of Mercury Marketing of Delaware, Inc., including the acts and practices set forth in the complaint. Saferstein transacts or has transacted business in the Eastern District of Pennsylvania.

COMMERCE

7. At all times material hereto, Defendants have been engaged in the business of offering for sale and selling Internet-related services, including design and hosting of Internet web pages and other products, in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS' BUSINESS ACTIVITIES

8. Since at least February 9, 1998, and continuing thereafter, Defendants have engaged in a plan, program, or campaign to sell Internet-related services, including design, maintenance, and hosting of web pages to consumers who run small businesses and nonprofit organizations, such as religious organizations, throughout the United States.

9. A “web page” is a single electronic file or document displayed on the World Wide Web (“WWW”). Web pages include at least the following elements: copy, graphics, layout, and internal technical design. Web pages are housed within a “web site,” which is a home or location on the WWW. Web sites are usually comprised of a home page and subordinate pages. In the instant case, the web pages marketed and sold by Defendants are housed within a web site maintained by Mercury Marketing of Delaware, Inc.

10. Defendants telemarketers cold-call consumers nationwide to sell them Internet-related services. Defendants’ telemarketers ask consumers if they are interested in purchasing Defendants’ Internet-related services or offer to send consumers additional free information about Defendants’ Internet-related services. In numerous instances, consumers who are billed for Defendants’ Internet-related services do not remember receiving Defendants’ telephone calls. In other instances, consumers who are billed for Defendants’ Internet-related services remember

receiving calls from Defendants' telemarketers, but declined to purchase Defendants' services or agreed only to receive additional information about Defendants' services. Nonetheless, Defendants add unauthorized monthly charges ranging from \$24.95 to \$29.95 for the Internet-related services to the consumers' local telephone bills. Defendants sometimes create web pages for these consumers.

11. Consumers never provide Defendants with a method of payment, such as a credit card or bank account information, and Defendants never send an invoice, bill, or other information about payment to consumers. In fact, after Defendants' telemarketers call consumers, Defendants typically have no further contact with consumers except for handling their subsequent complaints. Because of the unexpected placement of charges on their local telephone bills, many of these consumers do not notice the unauthorized charges and inadvertently pay Defendants' charges for many months.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

12. As set forth below, Defendants, individually and in concert with each other, have violated Section 5(a) of the FTC Act in connection with the offer and sale of Internet-related services, including design, maintenance, and hosting of web pages.

COUNT ONE

13. In numerous instances, by billing consumers, or by placing charges on consumers' telephone bills, defendants have represented, expressly or by implication, that consumers are legally obligated to pay charges for defendants' Internet-related services that defendants have caused to be billed to these consumers.

14. In truth and in fact, in numerous instances, consumers are not legally obligated to

pay charges for defendants' Internet-related services that defendants have caused to be billed to these consumers.

15. Therefore, defendants' representations, as alleged in Paragraph 13, are false and deceptive, and violate Section 5(a) of the FTC Act, 15 U.S.C. §45(a).

CONSUMER INJURY

16. Consumers in many areas of the United States have suffered substantial monetary loss as a result of Defendants' unlawful acts or practices. In addition, Defendants have been unjustly enriched as a result of their unlawful practices. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

17. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers the Court to grant injunctive and other equitable ancillary relief, including consumer redress, disgorgement, and restitution, to prevent and remedy violations of any provision of law enforced by the Commission.

PRAYER FOR RELIEF

Wherefore, Plaintiff requests that this Court:

1. 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;
2. Permanently enjoin the Defendants from violating the FTC Act, as alleged herein;
3. 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 of contracts, refund of monies paid, and disgorgement of ill-gotten monies; and

4. Award Plaintiff the costs of bringing this action, as well as such other and additional equitable relief as the Court determines to be just and proper.

Dated: _____, 2000.

Respectfully submitted,

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