

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Federal Trade Commission,

Plaintiff,

v.

First Consumers, LLC, et al.,

Defendants.

Civ. Action No. 14-1608

FILED ELECTRONICALLY

**FINAL ORDER FOR PERMANENT INJUNCTION AND MONETARY
JUDGMENT AS TO CORPORATE DEFENDANTS FIRST CONSUMERS, LLC;
STANDARD AMERICAN MARKETING INC.; POWERPLAY INDUSTRIES, LLC;
1166519075 QUÉBEC INC. D/B/A LANDSHARK HOLDINGS INC.; AND 1164047236
QUÉBEC INC. D/B/A MADICOM INC.**

Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), filed a Complaint for Permanent Injunction and Other Equitable Relief pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), and the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. § 6101 *et seq.*, against Defendants Ari Tietolman; Robert Barczai; Marc Ferry; Charle Borie; First Consumers, LLC; Standard American Marketing Inc.; PowerPlay Industries, LLC; 1166519075 Québec Inc. d/b/a Landshark Holdings Inc.; and 1164047236 Québec Inc. d/b/a Madicom Inc. (collectively, “Defendants”).

The FTC’s Complaint, filed on March 18, 2014, alleged that Defendants engaged in practices that violated Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the FTC’s Telemarketing Sales Rule, 16 C.F.R. Part 310. DE 1. Following the FTC’s application for an *ex parte* Temporary Restraining Order (“TRO”) with injunctive and equitable relief, including conduct prohibitions, an asset freeze, immediate access to business records, and expedited

discovery, DE 4, the Court granted the TRO and, later, entered a Preliminary Injunction. DE 6; DE 13.

On November 21, 2014, the FTC filed a request for the clerk to enter a default against First Consumers, LLC; Standard American Marketing Inc.; PowerPlay Industries, LLC; 1166519075 Québec Inc. d/b/a Landshark Holdings Inc.; and 1164047236 Québec Inc. d/b/a Madicom Inc. (“Corporate Defendants”) for their failure to answer or file a responsive pleading to the Complaint. DE 52; DE 52-1. The Clerk entered default against the Corporate Defendants on December 4, 2014. On January 13, 2015, the FTC filed a motion for default judgment against Corporate Defendants pursuant to Rule 55(b) of the Federal Rules of Civil Procedure. DE ____.

On February 19, 2015, the Court granted the FTC’s motion for default judgment on all counts of the Complaint against the Corporate Defendants.

THEREFORE, IT IS ORDERED as follows:

FINDINGS

- A. This Court has jurisdiction over this matter.
- B. Venue is proper in this district under 28 U.S.C. § 1391(b) and (c).
- C. At all relevant times, the acts and practices of the Defendants were in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
- D. The Complaint charges that Defendants violated Section 5 of the FTC Act, 15 U.S.C. § 45, and the FTC’s Telemarketing Sales Rule, 16 C.F.R. Part 310, by participating in a fraudulent scheme to make unauthorized debits to consumers’ bank accounts in connection with offerings for purported products such as fraud protection and prescription benefits.
- E. None of the Corporate Defendants has appeared in this action.

F. The clerk of court entered a notice of default against the Corporate Defendants First Consumers, LLC; Standard American Marketing Inc.; PowerPlay Industries, LLC; 1166519075 Québec Inc. d/b/a Landshark Holdings Inc.; and 1164047236 Québec Inc. d/b/a Madicom Inc. on December 4, 2014.

G. The total consumer harm equals \$10,734,255.81. This figure is the appropriate measure of harm to consumers because it is the total amount Defendants took from consumers, less money returned to consumers.

H. Corporate Defendants are jointly and severally liable for equitable monetary relief in the amount of \$10,734,255.81 plus post-judgment interest pursuant to 28 U.S.C. § 1961, which will accrue upon entry of this Final Order for Permanent Injunction and Monetary Judgment (“Final Order”).

I. Entry of this Final Order is in the public interest. There being no just reason for delay, the Clerk is directed to enter judgment immediately.

DEFINITIONS

For purposes of this Order, the following definitions shall apply:

A. **“Charge”** (as a noun or verb) means any claimed obligation to pay against a Financial Account, any debit, or any other withdrawal from a Financial Account.

B. **“Corporate Defendants”** means First Consumers, LLC; Standard American Marketing Inc.; PowerPlay Industries, LLC; 1166519075 Québec Inc. d/b/a Landshark Holdings Inc.; and 1164047236 Québec Inc. d/b/a Madicom Inc., as well as any affiliates, subsidiaries, successors, or assigns, and any fictitious business entities or business names created or used by these entities, or any of them.

C. **“Defendants”** means the Individual Defendants and the Corporate Defendants, individually, collectively, or in any combination.

D. **“Financial Account”** means a credit card, debit card, pre-paid or stored value card, bank account, or any other account through which a consumer can be Charged.

E. **“Individual Defendants”** means Ari Tietolman, Marc Ferry, Charles W. Borie, and Robert Barczai.

F. **“Remotely Created Check”** means a check drawn on a payor’s account that is initiated or created by or on behalf of the payee, and which is deposited into or cleared through the check clearing system. For purposes of this definition, an account includes any Financial Account or credit or other arrangement that allows a person to draw checks that are payable by, through, or at a bank. For purposes of this definition, a Remotely Created Check originates as a paper-based transaction, but can be processed subsequently through electronic means (such as through check imaging or scanning) or through non-electronic means. A Remotely Created Check is often also referred to as an “RCC,” “demand draft,” “bank draft,” “bank check,” or “preauthorized draft.”

G. **“Remotely Created Payment Order”** (“RCPO”) means a payment instruction or order drawn on a payor’s account that is initiated or created by or on behalf of the payee, and which is deposited into or cleared through the check clearing system. For purposes of this definition, an account includes any Financial Account or credit or other arrangement that allows checks, payment instructions, or orders to be drawn against it that are payable by, through, or at a bank. For purposes of this definition, unlike a Remotely Created Check, a Remotely Created Payment Order does not originate as a paper-based transaction. A Remotely Created Payment

Order is created when a seller, merchant, payment processor, or other entity directly or indirectly enters Financial Account and routing numbers into an electronic check template that is converted into an electronic file for deposit into the check clearing system.

H. **“Telemarketing”** means any plan, program, or campaign which is conducted to induce the purchase of goods or services by use of one or more telephones, and which involves a telephone call, whether or not covered by the Telemarketing Sales Rule.

ORDER

I. BAN ON TELEMARKETING

IT IS ORDERED that Corporate Defendants are permanently restrained and enjoined from participating in telemarketing, whether directly or through an intermediary.

II. BAN ON REMOTELY CREATED CHECKS AND PAYMENT ORDERS

IT IS FURTHER ORDERED that Corporate Defendants are permanently restrained and enjoined from:

A. Creating or causing to be created, or assisting others in creating or causing to be created, directly or indirectly, Remotely Created Checks or Remotely Created Payment Orders drawn on any account not controlled by that Corporate Defendant; and

B. Depositing or causing to be deposited, or assisting others in depositing or causing to be deposited, directly or indirectly, Remotely Created Checks or Remotely Created Payment Orders drawn on any account not controlled by that Corporate Defendant.

III. REQUIRED CONDUCT REGARDING CONSUMER AUTHORIZATION FOR CHARGES

IT IS FURTHER ORDERED that Corporate Defendants, their agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of

them, who receive actual notice of this Order, whether acting directly or indirectly, are permanently restrained and enjoined from, or assisting others engaged in, charging or attempting to charge any consumer's Financial Account, unless:

A. The payment method being used is otherwise permitted by this Order;

B. Before obtaining the consumer's Financial Account information, the Corporate Defendant or the entity charging the consumer's Financial Account clearly and conspicuously discloses to the consumer all material terms of the transaction, including but not limited to:

1. A description of the product or service being offered;

2. A telephone number for customer inquiry that is promptly answered

during all normal business hours;

3. Whether any recurring Charges will be charged to the consumer, and if so, the amount and frequency of such Charges;

4. The manner in which the consumer may cancel the Charge or obtain a refund;

5. The total cost of such product or service, including the number or amount of any installments to be paid by the consumer; and

6. Any restriction, limitation, or condition to purchase, receive, or use the product or service; and

C. Before charging the consumer's account, the Corporate Defendant obtains and retains, pursuant to Section X, below, competent and reliable evidence that proves the consumer's consent to the Charge.

IV. PROHIBITIONS AGAINST MISREPRESENTATIONS OF GOODS AND SERVICES

IT IS FURTHER ORDERED that, in connection with the advertising, marketing, promotion, offering for sale, or sale of any product or service or the Charging of any Financial Account, Corporate Defendants, their agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, are permanently restrained and enjoined from misrepresenting or assisting others in misrepresenting, expressly or by implication, any material fact, including but not limited to:

- A. Consumer authorization for a Charge;
- B. The nature or terms of any refund or cancellation, including but not limited to entitlement to a refund or cancellation and the manner in which a refund or cancellation can be obtained or when it will be received;
- C. Any recurring Charges, including but not limited to the amount and frequency of any such recurring Charges;
- D. The total cost to purchase and the quantity of such product or service, including the number or amount of any installments to be paid;
- E. Any restriction, limitation, or condition to purchase, receive, or use the product or service;
- F. Any aspect of the performance, efficacy, nature, or characteristic of the product or service; and
- G. That a person or entity is affiliated with, endorsed or approved by, or otherwise connected to any other person, business entity, charitable organization, or government entity.

V. MONETARY JUDGMENT

IT IS FURTHER ORDERED that:

A. Judgment in the amount of ten million, seven hundred thirty-four thousand, two hundred fifty-five dollars and eighty-one cents (\$10,734,255.81) is entered in favor of the Commission against Corporate Defendants, jointly and severally, as equitable monetary relief.

B. Corporate Defendants are ordered to pay to the Commission ten million, seven hundred thirty-four thousand, two hundred fifty-five dollars and eighty-one cents (\$10,734,255.81). Such payment must be made within 7 days of entry of this Order by electronic fund transfer in accordance with instructions provided by a representative of the Commission.

C. All money paid to the Commission pursuant to this Order may be deposited into a fund administered by the Commission or its designee to be used for equitable relief, including consumer redress and any attendant expenses for the administration of any redress fund. If a representative of the Commission decides that direct redress to consumers is wholly or partially impracticable or money remains after redress is completed, the Commission may apply any remaining money for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to Corporate Defendants' practices alleged in the Complaint. Any money not used for such equitable relief is to be deposited to the U.S. Treasury as disgorgement. Corporate Defendants have no right to challenge any actions the Commission or its representatives may take pursuant to this Subsection.

D. Each Corporate Defendant's Taxpayer Identification Number (Social Security Number or Employer Identification Number) may be used for collecting and reporting on any delinquent amount arising out of this Order, in accordance with 31 U.S.C. § 7701.

VI. LIFTING OF THE ASSET FREEZE

IT IS FURTHER ORDERED that the freeze against the assets of Corporate Defendants pursuant to the Temporary Restraining Order entered by this Court on March 18, 2014 and by the Preliminary Injunction entered on March 28, 2014 shall be lifted for the sole purpose of transferring assets pursuant to this Order, and shall be dissolved upon the transfer of all such assets.

VII. CONSUMER INFORMATION

IT IS FURTHER ORDERED that Corporate Defendants, their agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, are permanently restrained and enjoined from directly or indirectly:

A. Failing to provide sufficient consumer information to enable the Commission to efficiently administer consumer redress. If a representative of the Commission requests in writing any information related to redress, Corporate Defendants must provide it, in the form prescribed by the Commission, within 14 days;

B. Disclosing, using, or benefitting from consumer information, including the name, address, telephone number, email address, social security number, other identifying information, or any data that enables access to a consumer's account (including a credit card, bank account, or other Financial Account) that any Individual or Corporate Defendant obtained prior to entry of this Order in connection with the telemarketing of goods or services and debiting of consumers' Financial Accounts; and

C. Failing to destroy such consumer information in all forms in their possession, custody, or control within 30 days after entry of this order. *Provided, however,* that consumer information need not be disposed of, and may be disclosed, to the extent requested by a government agency or required by law, regulation, or court order.

VIII. ORDER ACKNOWLEDGMENTS

IT IS FURTHER ORDERED that Corporate Defendants obtain acknowledgments of receipt of this Order:

A. Corporate Defendants, within 7 days of entry of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.

B. For 5 years after entry of this Order, for any business that any Corporate Defendant, individually or collectively with any other Individual or Corporate Defendant, is the majority owner or controls directly or indirectly, Corporate Defendants must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees, agents, and representatives who participate in the marketing of goods or services or the Charging of consumers' Financial Accounts; and (3) any business entity resulting from any change in structure as set forth in the Section titled Compliance Reporting. Delivery must occur within 7 days of entry of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.

C. From each individual or entity to which Corporate Defendants delivered a copy of this Order, Corporate Defendants must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

IX. COMPLIANCE REPORTING

IT IS FURTHER ORDERED that Corporate Defendants make timely submissions to the Commission:

A. One year after entry of this Order, Corporate Defendants must submit a compliance report, sworn under penalty of perjury, in which each Corporate Defendants must: (a) identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission may use to communicate with Corporate Defendant; (b) identify all of that Corporate Defendant's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the goods and services offered, the means of advertising, marketing, and sales, and the involvement of any other Defendant; (d) describe in detail whether and how that Corporate Defendant is in compliance with each Section of this Order; and (e) provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission.

B. For 20 years after entry of this Order, Corporate Defendants must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following: (a) any designated point of contact; or (b) the structure of any Corporate Defendant or any entity that Corporate Defendant has any ownership interest in or controls directly or indirectly that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.

C. Corporate Defendants must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against the Corporate Defendant within 14 days of its filing.

D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: “I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: _____” and supplying the date, signatory’s full name, title (if applicable), and signature.

E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to: DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to:

Associate Director for Enforcement
Bureau of Consumer Protection
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: FTC v. First Consumers, LLC, et al.
Matter No. X140021

X. RECORDKEEPING

IT IS FURTHER ORDERED that Corporate Defendants must create certain records for 20 years after entry of the Order, and retain each such record for 5 years. Specifically, Corporate Defendants must create and retain the following records:

A. Proof of consumers' consent to a Charge, which includes the consumer's name, phone number, and address; the manner, time, place, and method of the consent; proof that the Corporate Defendant made all disclosures required by Section III.B, above; and sufficient data to readily show the complete consumer experience, including an audio recording of the entirety of any telemarketing transaction;

B. Accounting records showing the revenues from all goods or services sold;

C. Personnel records showing for each person providing services, whether as an employee or otherwise, that person's name; addresses; telephone numbers; job title or position; dates of service; and (if applicable) reason for termination;

D. Records of all consumer complaints and refund requests, whether received directly or indirectly, such as through a third party, and any response;

E. All records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission;

F. A copy of each unique advertisement or other marketing material, including affiliate network materials; and

G. Any documentation of commercial transactions or contracts with payment processors or list brokers.

XI. COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring Corporate Defendants' compliance with this Order, including any failure to transfer assets as required by this Order:

A. Within 14 days of receipt of a written request from a representative of the Commission, Corporate Defendants must: submit additional compliance reports or other

requested information, which must be sworn under penalty of perjury; appear for depositions; and produce documents for inspection and copying. The Commission is also authorized to obtain discovery, without further leave of court, using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.

B. For matters concerning this Order, the Commission is authorized to communicate directly with Corporate Defendants. Corporate Defendants must permit representatives of the Commission to interview any employee or other person affiliated with Corporate Defendants who has agreed to such an interview. The person interviewed may have counsel present.

C. The Commission may use all other lawful means, including posing, through its representatives as consumers, suppliers, or other individuals or entities, to Corporate Defendants or any individual or entity affiliated with Corporate Defendants, without the necessity of identification or prior notice. Nothing in this Order limits the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. § 49, 57b-1.

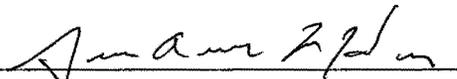
D. Upon written request from a representative of the Commission, any credit reporting agency must furnish consumer reports concerning Corporate Defendants, pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(a)(1).

XII. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court retains jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

SO ORDERED:

DATED: February 19, 2015



HON. GERALD AUSTIN McHUGH
UNITED STATES DISTRICT JUDGE