

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

CAPITAL PAYMENTS, LLC, a Delaware limited  
liability company, n/k/a BLUEFIN PAYMENT  
SYSTEMS LLC,

Defendant.

Case No. 16-CV-526

**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 permanent injunctive relief, rescission or reformation of contracts, restitution, the refund of monies paid, disgorgement of ill-gotten monies, and other equitable relief for Defendant’s acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the FTC’s Trade Regulation Rule entitled Telemarketing Sales Rule (“TSR” or “Rule”), 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) and (c), 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. 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 Telemarketing Act 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), and 57b.

**DEFENDANT**

6. Defendant Capital Payments, LLC was a Delaware limited liability company with its principal place of business in Melville, New York. In December 2014, Capital Payments, LLC changed its name to Bluefin Payment Systems LLC (“Bluefin”). Bluefin is now headquartered in Atlanta, Georgia with offices in Melville, Chicago, and Tulsa. (Capital Payments, LLC n/k/a Bluefin is referred to herein as “Capital Payments”). Capital Payments transacts or has transacted business in this district and throughout the United States.

**COMMERCE**

7. At all times material to this Complaint, Defendant has 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.

**DEFENDANT’S BUSINESS ACTIVITIES**

8. From 2010 through January 2013, Capital Payments knowingly, or with deliberate ignorance, enabled a deceptive telemarketing operation known as Tax Club to obtain and maintain merchant accounts in order to process unlawful credit card payments through VISA and MasterCard payment networks. Over the course of more than three years, Capital Payments ignored a series of red flags regarding Tax Club’s deceptive telemarketing scheme, including, but not limited to, a high number of returns and chargebacks, numerous chargeback complaints from consumers stating they were victims of fraud, and alerts by other financial institutions that Tax Club was engaged in fraudulent or deceptive practices.

9. Only after the FTC, along with the State of New York and State of Florida, commenced an enforcement action against Tax Club and related entities and principals in January 2013 did Capital Payments finally terminate its relationship with Tax Club.

**Overview of Payment Processing**

10. A merchant account is a type of account that allows businesses to process consumer purchases by a credit or debit card. Merchant accounts are available through financial institutions called merchant acquiring banks or “acquirers.” Without access to a merchant acquiring bank that is a member of a credit card association, such as MasterCard or VISA, merchants are not able to accept consumer credit or debit card payments. Merchant acquiring

banks frequently enter into contracts with payment processors that manage the bank's merchant processing program. Payment processors, together with the acquiring bank, in turn frequently enter into contracts with multiple Independent Sales Organizations ("ISOs") to sign up merchants for merchant accounts.

11. Capital Payments is an ISO that contracts with payment processors and acquiring banks to provide payment processing services to merchants in exchange for fees and commissions based on sales volumes processed by each merchant. At all times material to this Complaint, Capital Payments operated as an ISO for payment processors First Data Merchant Services Corporation ("First Data") and EVO Payments International, Inc. ("EVO").

12. As an ISO, Capital Payments agreed to solicit and recruit merchants for credit card payment processing services and to hold financial liability in the event of losses generated by its merchants. Capital Payments, together with the acquiring banks and payment processors, was responsible for underwriting potential merchants that applied for a merchant account and also for monitoring merchants that obtained merchant accounts to identify any fraudulent or illegal activity.

**The Relationship between Capital Payments and Tax Club**

13. Tax Club and its related entities engaged in a deceptive telemarketing scheme selling purported small business development services, including business entity formation, business planning and counseling, credit coaching and development, and logo and website design. Tax Club obtained consumer leads from other entities that marketed bogus business opportunities to individuals looking to work-at-home or start an Internet-based business.

14. Tax Club called the consumer leads and used a variety of deceptive tactics to induce consumers into purchasing its products and services that it falsely claimed were essential for the consumers' new businesses to succeed. Tax Club typically began its sales pitch by falsely claiming an affiliation with companies that had already sold consumers a business development product or service. Tax Club then falsely promised consumers that experienced professionals would provide an array of benefits and services including individualized business planning and business credit development. Tax Club also falsely claimed that consumers who purchased its business development products and services would be likely to recoup the amount they "invested" in the business opportunity, earn substantial income, and transfer the costs of Tax Club's products and services to the consumers' future businesses. After consumers made their initial purchase, Tax Club continued to target consumers with repeated high-pressure telemarketing sales calls that included the same types of misrepresentations to induce additional sales. Tax Club's deceptive telemarketing scheme victimized thousands of individual consumers, many of whom were elderly retirees, who lost thousands, and sometimes tens of thousands, of dollars.

15. Starting in mid-2007, Applied Merchant Systems, Inc. ("AMS") set up a number of merchant accounts for Tax Club. By November 2009, AMS had set up more than 20 accounts for Tax Club using five different entity names, including Manhattan Professional Group, Inc. ("MPG"), 5410, Inc. ("5410"), Premier Coaching and Consulting LLC ("Premier"), Tahuya, Inc. ("Tahuya"), and HB Marketing Services, LLC ("HB Marketing"). The applications for these merchant accounts were all signed by Tax Club's President, Michael Savage, or its Sales Manager, Brendon Pack. In late 2009, Capital Payments engaged in an

asset purchase with AMS, through which it acquired approximately 12,000 merchant accounts. Included in these 12,000 accounts were the accounts set up for Tax Club.

16. After it acquired the Tax Club merchant accounts from AMS, Capital Payments continued to service and monitor those existing Tax Club merchant accounts. In addition, Capital Payments opened additional merchant accounts for Tax Club in 2010. The Tax Club merchant accounts opened by Capital Payments were also set up under the names of MPG, 5410, and Premier, as well as a new entity called Marble Base, Inc.

17. At or soon after the time it acquired the Tax Club accounts, Capital Payments knew or should have known that many of the merchant accounts set up under different entity names by the Tax Club principals were all associated with Tax Club.

18. In addition to opening and monitoring merchant accounts for Tax Club, Capital Payments also opened and monitored merchant accounts for many of Tax Club's consumer-clients. Virtually all of these consumers had purchased or invested in a bogus business opportunity venture and did not have an operational business. As a result, almost all of the consumer-clients that Tax Club referred to Capital Payments did not need a merchant account because they had no sales.

19. Monthly reports generated by Capital Payments showed the merchant accounts for virtually all of Tax Club's consumer-clients processed no sales transactions.

20. Capital Payments nevertheless continued to sell merchant accounts to Tax Club's consumer-clients that Tax Club referred and deducted minimum monthly fees from their bank accounts. Capital Payments split the fees it obtained from these consumer-clients with Tax Club.

21. From 2009 through 2012, Capital Payments sold merchant accounts to approximately 690 consumers referred by Tax Club. Over 98% of all the consumer accounts referred by Tax Club had no sales. Only ten customer accounts referred by Tax Club had any sales. The largest account had just over \$600 dollars in total sales.

22. In January 2013, the FTC, along with the State of New York and the State of Florida, commenced a civil enforcement action against Tax Club and related entities and principals for using a variety of deceptive sales tactics during their telemarketing calls to induce consumers to purchase their services. *See FTC, et al. v. The Tax Club, et al.*, No. 13-cv-210-JMF (S.D.N.Y. filed January 9, 2013). In June 2014, Tax Club and its principals entered into Stipulated Final Judgments and Orders for Permanent Injunctions and Monetary Relief.

23. Capital Payments ended its relationship with Tax Club in February 2013.

24. From 2010 through 2012, Tax Club processed over \$138 million through merchant accounts it maintained and opened through Capital Payments.

25. Capital Payments generated approximately \$2.6 million in gross revenues and fees from its relationship with Tax Club.

#### **Underwriting and Monitoring Merchant Accounts**

26. Merchant acquiring banks and payment processors have underwriting criteria that a merchant must meet to obtain a merchant account. These criteria are designed to avoid losses associated with sales transactions that are charged back, especially losses due to transactions induced by fraud and deceptive practices or unauthorized charges.

27. A chargeback occurs when customers contact their credit card issuing bank to dispute a charge appearing on their credit card account statements, and the issuing bank charges that amount back to the merchant bank. Each chargeback receives a chargeback reason code that describes the nature of the dispute, such as “Fraudulent Transaction.”

28. The credit card associations (e.g., Visa and MasterCard) have established compliance monitoring programs that identify those merchants that generate excessive numbers of chargebacks and have high chargeback rates. The credit card associations calculate a merchant’s chargeback rate as a ratio, which represents the number of chargebacks generated by the merchant in a particular month divided by the number of sales transactions submitted by the merchant in a particular month.

29. When a merchant generates excessive chargebacks and has a high chargeback rate for two consecutive months, Visa and MasterCard place the merchant in compliance monitoring programs designed to detect and correct practices that harm consumers and to protect the integrity of the payment system. Both VISA’s and MasterCard’s chargeback monitoring programs apply to U.S. merchants that have chargebacks rates over 1%. For example, VISA identifies U.S. merchants for its Merchant Chargeback Monitoring Program (“MCMP”) when the following three conditions arise in the same calendar month: (a) a merchant has at least 100 sales transactions; (b) the merchant has at least 100 chargebacks; and (c) the merchant has a chargeback rate of at least one percent.

30. The credit card associations have also established monitoring programs that identify those merchants that generate an excessive number of fraudulent transactions and have a high percentage of fraudulent transactions. MasterCard calculates a merchant’s fraud-to-sales

rate as a ratio, which represents the number of fraudulent transactions generated by the merchant in a particular month divided by the number of sales transactions submitted by the merchant in a particular month. A merchant that generates over a 3% fraud-to-sales rate in any month will trigger MasterCard's Global Merchant Audit Program ("GMAP").

31. To assist the underwriting process, the credit card associations have created a program to track merchants and individuals that previously have had merchant accounts terminated by merchant banks for, among other things, excessive chargebacks. MasterCard, for example, maintains the Member Alert to Control High-Risk Merchants ("MATCH") list. This list includes merchants (along with principals) whose accounts were terminated by merchant banks for certain reasons. For example, a merchant bank must place a merchant on the MATCH list when the merchant bank terminates the merchant's processing account for fraud, excessive chargebacks, or other violations of the card association's operating rules.

32. To facilitate the opening and monitoring of merchant accounts, Capital Payments reviewed merchant applications and any supporting documents provided by the merchant. After opening a merchant account, Capital Payments maintained access to the merchant's processing activities, including the sales, return, and chargeback data. This access enabled Capital Payments to view and monitor transaction activity, including individual transaction details, as well as monthly and year-to-date summaries of overall transaction and chargeback counts, and volume for each merchant account.

#### **Capital Payments Ignored Red Flags**

33. Before Capital Payments acquired the Tax Club merchant accounts and began providing processing services for Tax Club in November 2009, Tax Club's President, Michael

Savage, had been placed on MasterCard's MATCH list by Banc of America Merchant Services, LLC for excessive chargebacks. Capital Payments had access to the MATCH list and knew or should have known that Savage was on it. In January 2011, Savage was again placed on the MATCH list by a different acquirer, American Express Merchant Services, for violation of the card association's operating rules.

34. During the time Capital Payments provided payment processing services for Tax Club, the Tax Club merchant accounts generated high chargebacks and high return ratios. The Tax Club merchant accounts maintained by Capital Payments had an overall chargeback rate of over 2%, plus a return rate of over 15%.

35. Capital Payments knew Tax Club accounts had chargeback rates that exceeded the 1% chargeback rate that the credit card associations view as excessive. From May 2010 through December 2012, Tax Club accounts at Capital Payments in the aggregate had an overall monthly chargeback rate over 1% every calendar month.

36. After the credit card associations placed certain Tax Club accounts in chargeback monitoring programs, at First Data's request, Capital Payments helped Tax Club prepare Chargeback Reduction Plans in November 2010, and again in August 2011. The Chargeback Reduction Plans, however, focused on Tax Club "doing as many refunds as possible to avoid chargebacks," according to a Capital Payments employee, rather than addressing Tax Club's sales practices that caused the excessive chargebacks.

37. A number of Tax Club accounts were closed down by the acquiring bank or repeatedly placed in merchant monitoring lists by the credit card associations for high chargeback rates as well as high fraud-to-sales rates.

38. For example, in July 2010, two Tax Club merchant accounts (using D/B/As Global Education and Corporate Credit) were placed in MasterCard's GMAP for exceeding fraud-to-sales activity thresholds. In April 2011, three Tax Club accounts (using D/B/As Global Education, Email Cash, and Cell Phone Coaching) were closed down by the acquirer HSBC Bank for "prohibited business operations," while two other merchant accounts (using D/B/As Website Services and Internet Marketing Success) were placed in MasterCard's GMAP for excessive fraud-to-sales ratios. In December 2012, another Tax Club account (D/B/A Real Income) was placed in VISA's MCMP with a chargeback ratio of over 19%.

39. Capital Payments also received from the processor EVO numerous chargeback requests from consumers who disputed sales processed through several Tax Club merchant accounts as fraudulent or unauthorized.

40. Capital Payments received other indications from financial institutions that Tax Club may have been engaged in fraudulent practices, but Capital Payments did not investigate these allegations.

41. Despite the consistently high rates of chargebacks and returns, consumer complaints, evidence that Tax Club customer-clients had no sales activities, and warnings from other financial institutions about deceptive practices, Capital Payments continued to provide payment processing services to Tax Club up through the time the FTC and States of New York and Florida filed an enforcement action against Tax Club in January 2013.

#### **VIOLATIONS OF 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, in

1994. The FTC adopted the original Telemarketing Sales Rule (“TSR”) in 1995, extensively amended it in 2003, and amended certain sections thereafter. 16 C.F.R. Part 310.

43. Tax Club was a “seller” and “telemarketer” engaged in “telemarketing,” as defined by the TSR, 16 C.F.R. § 310.2(aa), (cc), and (dd).

44. The TSR prohibits sellers and telemarketers from misrepresenting, directly or by implication, any material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of a sales offer. 16 C.F.R. § 310.3(a)(2)(iii).

45. The TSR also prohibits a person from providing substantial assistance or support to any seller or telemarketer when that person “knows or consciously avoids knowing” that the seller or telemarketer is engaged in acts or practices that violate Section 310.3(a). 16 C.F.R. § 310.3(b).

46. 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).

## **Count I**

### **Assisting and Facilitating Deceptive Telemarketing Acts**

47. In numerous instances, Defendant provided substantial assistance or support to Tax Club when Defendant knew, or consciously avoided knowing, that Tax Club was engaged in acts or practices that violate Section 310.3(a)(2) of the TSR, as described in Paragraphs 8 through 41 above.

48. Defendant's acts or practices, as described in Paragraph 47 above, are deceptive telemarketing acts or practices, in violation of the TSR, 16 C.F.R. § 310.3(b).

**CONSUMER INJURY**

49. Consumers have suffered substantial injury as a result of Defendant's violations of the TSR. In addition, Defendant has been unjustly enriched as a result of its unlawful acts or practices. Absent injunctive relief by this Court, Defendant is likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

**THIS COURT'S POWER TO GRANT RELIEF**

50. 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.

51. 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 Defendant's violations of the TSR, including the rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies.

**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, and 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. Enter a permanent injunction to prevent future violations of the FTC Act and the TSR by Defendant;

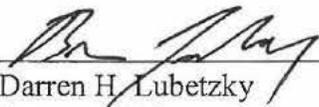
B. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendant's violations of the FTC Act and the TSR, including, but not limited to, rescission or reformation of contracts, restitution, the refund of monies paid, the disgorgement of ill-gotten monies, and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

C. 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: February 2, 2016

  
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