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District Of Montana  
Missoula

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION**

_____		)
FEDERAL TRADE COMMISSION,		)
		)
Petitioner,		)
v.		)
	Misc. Case No. <u>MC-14-02-M-JCL</u>	)
COUNTRYWIDE		)
PERIODICALS, LLC,	<b>Oral Argument Requested</b>	)
		)
Respondent.		)
		)
_____		)

**PETITION OF THE FEDERAL TRADE COMMISSION FOR AN  
ORDER TO ENFORCE CIVIL INVESTIGATIVE DEMAND**

The FTC petitions this Court, pursuant to Section 20 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 57b-1, for an order requiring respondent, Countrywide Periodicals, LLC ("Countrywide") to comply with a civil investigative demand ("CID"), a form of administrative investigative

process, requesting materials and information relating to a law enforcement investigation. The purpose of the investigation is to determine whether Countrywide has engaged in the deceptive or abusive telemarketing of magazine subscriptions in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), or the Commission's Telemarketing Sales Rule ("TSR"), 16 CFR. pt. 310.

Countrywide's owner is Jason W. Ellsworth who, along with a related company, Your Magazine Provider, Inc. ("YMP"), is under order in an already-filed action against the Commission.<sup>1</sup> The Commission is concurrently moving in that action for contempt and to enforce subpoenas issued under Fed. R. Civ. P. 45.<sup>2</sup> The Court may wish to consider this CID enforcement proceeding and the pending discovery motions in that case at the same time.

In support of its Petition, the Commission states as follows:

1. The Commission is authorized by Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), to prohibit "unfair or deceptive acts or practices in or affecting

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<sup>1</sup> Stipulated Final Judgment and Order for Permanent Injunction at 8-24, *FTC v. Your Magazine Provider, Inc.*, No. CV-08-64-M-DWM (D. Mont. Oct. 7, 2009), ECF No. 91.

<sup>2</sup> *See id.*, Motion to Hold Jason W. Ellsworth in Contempt of this Court's October 7, 2009 Order and to Enforce Subpoenas Issued Pursuant to that Order. The Court may wish to refer to that motion for a more complete background and context in which the instant Civil Investigative Demand ("CID") enforcement proceeding arises.

commerce.” The Commission is also authorized by the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. §§ 6101-6108, to prevent deceptive or abusive telemarketing practices.

2. Section 3 of the FTC Act, 15 U.S.C. § 43, authorizes the Commission to “prosecute any inquiry necessary to its duties in any part of the United States.” Section 6 of the FTC Act, 15 U.S.C. § 46, empowers the Commission, with certain exceptions not relevant here, to “gather and compile information concerning, and to investigate from time to time the organization, business, conduct, practices and management of, any person, partnership, or corporation engaged in or whose business affects commerce.” Section 20(c) of the FTC Act, 15 U.S.C. § 57b-1(c), authorizes the Commission to issue CIDs to require the production of documents or other information relating to any Commission law enforcement investigation.

3. This Court has jurisdiction and the authority to enforce the Commission’s duly issued CIDs under Sections 20(e) and (h) of the FTC Act, 15 U.S.C. §§ 57b-1(e), (h). Section 16 of the FTC Act, 15 U.S.C. § 56, provides authority to the Commission to litigate such matters in its own name.

4. Countrywide is a Montana corporation with its principal place of business in this judicial district. Petition Exhibit (“Pet. Exh.”) 1 (Bartley Decl.) ¶

3. It solicits, through telemarketing, magazine subscriptions from consumers throughout the United States, and is engaged in “commerce” throughout the country as defined under Section 4 of the FTC Act, 15 U.S.C. § 44. *Id.*

5. Venue and jurisdiction are proper under Sections 20(e) and (h) of the FTC Act, 15 U.S.C. § 57b-1(e), (h), because Countrywide “resides, is found, or transacts business” in this judicial district. *Id.*

6. After the FTC settled its case against Your Magazine Provider and Ellsworth, it began receiving hundreds of consumer complaints about Countrywide’s telemarketing practices. Pet. Ex. 1, ¶ 4. Consumers have complained, among other things, that (1) Countrywide failed to fulfill their orders as promised; (2) the company’s telemarketers misrepresented various aspects of its business, including its billing and cancellation policies; and (3) the company’s telemarketers have engaged in abusive and deceptive conduct. *Id.*

7. On May 6, 2013, as part of an investigation to determine whether Countrywide has violated Section 5(a) of the FTC Act or the TSR, the Commission issued a CID. Pet. Ex. 3 (CID); Pet. Ex. 1 (Bartley Decl.) ¶ 5. The CID was issued under a resolution authorizing compulsory process to obtain information and documents in connection with an investigation into possible

violations of Section 5 of the FTC Act or the TSR by “telemarketers, sellers, or others assisting them. . .” Pet. Exh. 2 (Resolution).

8. The CID directed Countrywide to respond to fifteen narrowly tailored document requests and two interrogatories. Pet. Exh. 3 (CID) at 10-12; Pet. Exh. 1 (Bartley Decl.) ¶ 6. Among other things, the CID requested documents and information regarding customer orders, including magazine titles purchased, subscription terms, and customer payments. The CID also requested documents concerning: (1) the company’s sales practices, including scripts, training materials, and audio recordings of sales calls; (2) the company’s authority to offer specific subscription pricing and terms for magazines; (3) its affiliation with banks or credit card companies; (4) its agreements and payment arrangements with magazine clearinghouses; (5) its sources of prospective customers; (6) copies of customer complaints, and (7) employee contact and employment-related information. Pet. Exh. 1 (Bartley Decl.) ¶ 7; Pet. Exh. 3 (CID) at 10-12.<sup>3</sup> The CID directed Countrywide to provide the responsive materials and information no later than June 3, 2013.

*Id.*

9. Countrywide filed an administrative petition to quash the CID

under Section 2.10 of the FTC's Rules of Practice and Procedure, 16 C.F.R. § 2.10. Pet. Exh. 4 (Countrywide's Petition to Quash). The Commission denied Countrywide's petition to quash in its entirety on July 3, 2013, and issued an order directing the company to comply no later than July 19, 2013. Pet. Exh. 5 (FTC's Order). In its ruling, the Commission concluded that the requested materials and information were "clearly relevant" to its investigation and that Countrywide had failed to support its assertions of overbreadth and undue burden. *Id.* at 4-6. The Commission also rejected the company's contention that the agency was not entitled to sensitive or private employee or customer order information. The Commission explained that such information enjoys ample protection under the Commission's Rules of Practice, 16 C.F.R. § 4.10, and the FTC Act, 15 U.S.C. § 57b-2. The Commission also rejected as baseless Countrywide's allegation that the Commission had acted in bad faith in issuing the CID. Pet. Exh. 5 (FTC's Order) at 7-8.

10. Countrywide produced some responsive materials and information in July 2013. Pet. Exh. 1 (Bartley Decl.) ¶ 9. The submission was deficient in numerous respects. Most notably, the production omitted the requested audio

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<sup>3</sup> Page citations to Pet. Exh. 3 are to the § schedule attached to the CID.

recordings of sales calls, customer order information, and the company's contracts and payment arrangements with magazine clearinghouses. *Id.* Also, even though FTC staff has learned about hundreds of consumer complaints, Countrywide produced merely twelve. *Id.* The company refused to produce the magazine titles ordered by its customers or the employee contact and employment-related information, claiming that such information was private. *Id.*

11. In October and November 2013, Countrywide submitted additional responsive materials. *Id.*, ¶ 10. These additional submissions, however, did not fully cure the deficiencies. Most notably, Countrywide persisted in its refusal to produce any magazine titles ordered by its customers or employee employment-related information, and it failed to produce any customer order or billing information, contracts or payment arrangements with magazine clearinghouses, and the requested audio recordings of its sales calls. *Id.*

12. To date, Countrywide has failed to provide complete responses to 11 of the 17 CID requests. *Id.*, ¶ 11 & Appendix A. Countrywide's failure to comply fully with the CID has delayed and impeded the Commission's investigation. *Id.*, ¶ 11.

13. The FTC has not sought the relief requested herein in this or any other court.

**PRAYER FOR RELIEF**

WHEREFORE, the Commission invokes the aid of this Court and prays:

a. For the immediate issuance of an order directing Countrywide to show cause why it should not comply in full with the CID;

b. For a prompt determination of this matter and an order requiring Countrywide to fully comply with the CID within ten (10) days of such order;  
and

c. For such other relief as this Court deems just and proper.

Respectfully submitted,

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/s/   
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