

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

Case No. 9:17-CV-80425-DMM

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

DANIEL L. CROFT, an individual doing business
As PC Guru Tech Support and Elite Tech Support,

Defendant.

ORDER GRANTING MOTION FOR DEFAULT JUDGMENT

THIS CAUSE comes before the Court on Plaintiff's Motion for Default Judgment, filed July 11, 2017. (DE 22). For reasons stated below, the Motion is granted.

Background. On April 3, 2017, Plaintiff, the Federal Trade Commission ("Commission" or "FTC"), filed its Emergency Complaint for Permanent Injunction and Other Equitable Relief, ("Complaint"), pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b) and Section 7(a) of the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 ("CAN-SPAM Act"), 15 U.S.C. § 7706 (a). (DE 1).

The FTC is an independent agency of the United States Government created by statute (15 U.S.C. §§ 41-58). (Compl. at ¶ 4). 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. (*Id.*). Pursuant to 15 U.S.C. § 7706(a), the FTC also enforces the CAN-SPAM Act, 15 U.S.C. §§ 7701-7713, as if statutory violations of the CANSPAM Act "were an unfair or deceptive act

or practice proscribed under Section 18(a)(1)(B) of the [FTC Act] (15 U.S.C. 57a (a)(1)(B)).” (*Id.*) Defendant is an individual residing in Lake Worth, Florida. (*Id.* at ¶ 6).

The Complaint alleges that Defendant, since at least July 2016, deceptively marketed, advertised, promoted, and offered for sale technical support services by false representing to consumers that he was affiliated with the FTC and that he had been appointed by the FTC to contact consumers to provide technical support services. (*Id.* at ¶ 18). Defendant contacted consumers and marketed his services by initiating unsolicited commercial electronic mail messages, or spam, to consumers’ computers. (*Id.* at ¶ 19). Defendant sent these spam emails to consumers who had previously purchased technical support services from two now-defunct Florida-based companies: Fast Fix 123, LLC (“Fast Fix 123”) and One Bit IT Co. (“One Bit IT”). (*Id.* at ¶ 21). Defendant’s spam emails appeared to consumers to be legitimate warnings sent to these consumers on behalf of the FTC and, to lure customers into opening the spam emails, used subject lines such as “spyware was put on your computer by Fastfix 123” and “How to remove OneBit IT spyware.” (*Id.*).

Defendant stated in his emails that the FTC had shut down Fast Fix 123 or One Bit IT for putting spyware on consumers’ computers. (*Id.* at ¶ 23). Defendant also stated that he was “given the job” to contact every customer and assist them by removing the spyware purportedly lurking on their computers. (*Id.* at ¶ 24). Defendant repeated these representations in a fake FTC press release, which he titled a “Federal Trade Commission Report” and included in his emails. (*Id.* at ¶ 25). This “report” was an adulterated press release, issued by the FTC in a real technical support scam case involving different companies, that Defendant doctored to convince customers that his claimed affiliation with the FTC was true. (*Id.* at ¶¶ 26-27).

In response to these spam emails, consumers allow Defendant to remotely access their computers to provide what they believe to be technical support on behalf of the FTC. (*Id.* at ¶ 32). Defendant then attempts to sell to consumers additional technical support services, telling the consumers that their computers are infected. (*Id.*).

The FTC alleges three counts: (1) misrepresentations regarding affiliation with the FTC in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a); (2) failure to provide a valid physical postal address in violation of Section 5(a)(5)(A) of the CAN-SPAM Act, 15 U.S.C. § 7704(a)(5)(A) (iii); and (3) failure to identify the email message as an advertisement or solicitation in violation of Section 5(a)(5)(A) of the CAN-SPAM Act, 15 U.S.C. § 7704(a)(5)(A)(i). The FTC seek sa permanent injunction to prevent future violations of the FTC Act and the CAN-SPAM Act, an award of damages to refund the consumers of the monies paid to Defendant, and the costs of bringing this action.

On April 7, 2017, the parties filed a Stipulated Preliminary Injunction, which the Court entered on April 10, 2017. (DE 14). On April 21, 2017, Magistrate Judge Dave Lee Brannon held a scheduling conference with the parties and Judge Brannon entered a pretrial scheduling order and order referring the case to mediation that same day. (DE 19). Despite being properly served, having notice of this action, and participating in the scheduling conference with Judge Brannon, Defendant has failed to answer the Complaint. Accordingly, pursuant to Rule 55(a) of the Federal Rules of Civil Procedure, the Clerk of Court entered default against Defendant on May 15, 2017. (DE 21). On July 11, 2017, the FTC filed the instant Motion for Default Judgment.

Standard. Federal Rule of Civil Procedure 55(b)(2) authorizes a court to enter default judgment against a defendant who fails to plead or otherwise defend. Fed. R. Civ. P. 55(b)(2).

“[B]efore entering a default judgment for damages, the district court must ensure that the well-pleaded allegations in the complaint, which are taken as true due to the default, actually state a substantive cause of action and that there is a substantive, sufficient basis in the pleadings for the particular relief sought.” *Tyco Fire & Sec., LLC v. Alcocer*, 218 F. App’x 860, 863 (11th Cir. 2007). A “default judgment cannot stand on a complaint that fails to state a claim.” *Chudasama v. Mazda Motor Corp.*, 123 F.3d 1353, 1370 n.41 (11th Cir. 1997). If the complaint states a claim, the court must then determine the amount of damages and, if necessary, “may conduct hearings . . . to . . . determine the amount of damages.” Fed. R. Civ. P. 55(b)(2). However, where the amount of damages requested is “a liquidated sum or one capable of mathematical calculation,” no hearing is needed. *United Artists Corp. v. Freeman*, 605 F.2d 854, 857 (5th Cir. 1979).¹ The party seeking default judgment must prove its damages. “[M]ere conclusions and unsupported factual allegations, as well as affidavits based, in part, upon information and belief, rather than personal knowledge” are insufficient to prove damages for the purpose of default judgment. *Tara Productions Inc. v. Hollywood Gadgets, Inc.*, 449 F. App’x 908, 912 (11th Cir. 2011).

Discussion. In light of the factual allegations set forth in the Complaint, which are deemed admitted in light of Defendant’s default, and for the reasons explained on the FTC’s Motion (DE 22 at 5-7), I find the FTC has stated claims under the FTC Act and the CAN-SPAM Act. Accordingly, I turn to the relief sought.

The FTC seeks entry of a permanent injunction, as well as monetary relief. I find entry of permanent injunction is warranted pursuant to Section 13(b) of the FTC Act, 15 U.S.C. §

¹ This precedent is binding as a result of the Eleventh Circuit’s decision in *Bonner v. City of Prichard, Ala.*, 661 F.2d 1206, 1209 (11th Cir. 1981).

53(b). I also find, for the reasons stated in the FTC's Motion (DE 22 at 8-11), that the requested permanent injunction is appropriate in light of Defendant's past conduct and the likelihood of recurrence in the future absent an injunction.

As to monetary relief, the FTC seeks a judgment against Defendant in the amount of \$52,168.70, based on the estimated amount of consumer injury caused by Defendant's acts.

According to the FTC,

Croft marketed his services as PC Guru Tech Support and Elite Tech Support through deceptive practices. Accordingly, judgment for the total estimated amount Croft received during the operation of this scam is warranted. The FTC estimates that Croft earned at least \$52,168.70 dollars operating as PC Guru. This figure was derived from records the FTC received from PayPal, which processed payments made by consumers to PC Guru and Croft. The amount was calculated by summing consumer payments to PC Guru's PayPal account and subtracting the payments that were refunded, returned, or charged back to consumers' accounts. The FTC calculates that during the operation of the PC Guru scam, Croft took in gross deposits of \$53,617.63, at a minimum. The FTC calculates that consumers received \$1,448.93 in refunds, returns, or chargebacks. Thus, Croft caused at least \$52,168.70 in consumer injury, for which he is liable.

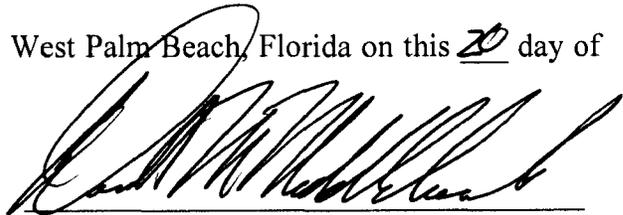
(DE 22 at 12). The FTC also seeks an order requiring any third party holding assets of Defendant to turn those assets over to the FTC. The FTC has proven damages to consumers in the amount of \$52,168.70.

Accordingly, it is hereby

ORDERED AND ADJUDGED that Plaintiff's Motion for Default Judgment (DE 22) is **GRANTED**. Final default Judgment will be entered by separate order.

DONE AND ORDERED in Chambers at West Palm Beach, Florida on this 20 day of July, 2017.

cc: Counsel of Record


DONALD M. MIDDLEBROOKS
UNITED STATES DISTRICT JUDGE