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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

FEDERAL TRADE COMMISSION,  
  
Plaintiff,  
  
v.  
  
INTERNATIONAL BUSINESS NETWORK, INC.,  
a corporation, and  
  
DANNY YAHALOM, individually and  
as an officer of INTERNATIONAL  
BUSINESS NETWORK, INC., and  
  
OREN BEN ELKANAH, individually and  
as an officer of INTERNATIONAL  
BUSINESS NETWORK, INC.,  
  
Defendants.

99-12831

CV-

COMPLAINT FOR  
INJUNCTION AND OTHER  
EQUITABLE RELIEF

BY \_\_\_\_\_  
CLERK, U.S. DISTRICT COURT  
CENTRAL DISTRICT OF CALIF.  
LOS ANGELES

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FILED

(RLX)

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

1 affecting commerce. The Commission also enforces the  
2 Telemarketing Sales Rule, 16 C.F.R. Part 310, which prohibits  
3 deceptive or abusive telemarketing practices. The Commission  
4 may initiate federal district court proceedings by its own  
5 attorneys to enjoin violations of the FTC Act and the  
6 Telemarketing Sales Rule and to secure such equitable relief  
7 as may be appropriate in each case, including restitution for  
8 injured consumers. 15 U.S.C. §§ 53(b), 57b and 6105(b).

9 DEFENDANTS

10 5. Defendant International Business Network, Inc.  
11 ("IBN") is a Nevada corporation with its offices and  
12 principal place of business located at 18340 Ventura  
13 Boulevard, #230, Tarzana, California 91356. Defendant IBN  
14 transacts or has transacted business in the Central District  
15 of California. Defendant IBN has done business as  
16 "IBN-International Business Network, Inc." and "IBN."

17 6. Defendant Danny Yahalom is an owner and officer of  
18 IBN. Individually or in concert with others, he has  
19 formulated, directed, controlled or participated in the acts  
20 and practices of the corporate defendant, including the  
21 various acts and practices set forth herein. Defendant  
22 Yahalom resides in, and transacts or has transacted business  
23 in, the Central District of California.

24 7. Defendant Oren Ben Elkanah is an owner and officer  
25 of IBN. Individually or in concert with others, he has  
26

1 formulated, directed, controlled or participated in the acts  
2 and practices of the corporate defendant, including the  
3 various acts and practices set forth herein. Defendant  
4 Elkanah resides in, and transacts or has transacted business  
5 in, the Central District of California.

6  
7 COMMERCE

8 8. At all times material hereto, defendants have been  
9 engaged in the business of offering for sale and selling,  
10 through telemarketers, nondurable office supplies, including  
11 photocopier toner, in or affecting commerce, as "commerce" is  
12 defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

13  
14 DEFENDANTS' BUSINESS ACTIVITIES

15 9. Since at least 1995 and continuing thereafter,  
16 defendants have engaged in a plan, program or campaign to  
17 sell nondurable office supplies, including photocopier toner,  
18 via interstate telephone calls throughout the United States.

19 10. Defendants, directly or through sales  
20 representatives, have contacted various organizations by  
21 telephone, and in numerous instances have represented,  
22 expressly or by implication, that (a) they are the consumer's  
23 regular supplier of photocopier toner or that they are, or  
24 are connected with the photocopier manufacturer, and that  
25 (b) the price of toner is about to substantially increase,  
26

1 but that (c) the consumer can continue to obtain toner at the  
2 current price for an extended period of time.

3 11. Before making the telephone call in which they  
4 represent themselves as the consumer's regular supplier or  
5 manufacture's representative, defendants, directly or through  
6 telemarketers, often first telephone consumers and ask to  
7 verify the make and model of their photocopiers.

8 12. In both phone calls, defendants fail to identify  
9 themselves or to promptly, clearly and conspicuously disclose  
10 that the purpose of the call is to sell toner. Using the  
11 information obtained in the first phone call, defendants in  
12 the subsequent phone call tell the business that the price of  
13 toner for their particular brand and model photocopier is  
14 about to substantially increase. Defendants then state that,  
15 because the business is a good customer, toner will continue  
16 to be shipped at the old price. The use of "make and model"  
17 information, the references to the "old price" and to being  
18 "a good customer" convince most businesses that they are  
19 speaking with their regular toner supplier. The business  
20 believes that it is simply being advised that, although a  
21 general price increase is going to occur, as "a good  
22 customer," the business will continue to obtain toner from  
23 their regular supplier at the price they have paid in the  
24 past. Most businesses do not believe the purpose of the  
25  
26

1 calls is to solicit new orders for toner from a company with  
2 whom they have never dealt.

3 13. Defendants follow up the telephone calls by  
4 shipping toner to the business and separately sending  
5 invoices. The invoices deceptively refer to "boxes" and  
6 "quantities" of toner, and the price equals the amount the  
7 business would pay for several cartridges of toner. Based on  
8 the invoices, consumers expect that the boxes shipped to them  
9 will contain the same number of cartridges they would have  
10 received from their regular supplier for the amount charged.  
11 The first shipment is often followed by additional unordered  
12 shipments which, in many instances, are billed at even higher  
13 prices. Defendants sometimes send invoices for more boxes  
14 than are shipped. Businesses that complain about the number  
15 of boxes and/or cartridges received are sometimes told that  
16 IBN is storing the additional boxes or cartridges at its  
17 warehouse and plans to ship them to the business at a later  
18 date. Some businesses are billed for more toner than they  
19 could use in several years.

20 14. In numerous instances, when consumers who have  
21 received toner tell the defendants that they did not order  
22 defendants' toner or that they did not agree to pay the price  
23 defendants charge, defendants represent that the consumers  
24 authorized the shipments and are legally obligated to pay for  
25 them. Defendants also often represent that the product  
26

1 cannot be returned or that no refunds can be made.

2 Defendants often make repeated demands to consumers for  
3 payment and threaten collection action and/or an adverse  
4 credit report if consumers do not pay.

5 VIOLATIONS OF SECTION 5(a) OF THE FTC ACT

6 COUNT I

7 15. In numerous instances, in connection with the sale,  
8 offering for sale, or distribution of nondurable office  
9 supplies, including photocopier toner, defendants have  
10 represented, expressly or by implication through, *inter alia*,  
11 telephone calls, letters, invoices, packing slips and/or  
12 shipment of toner, that businesses and other entities ordered  
13 the office supplies that were shipped and/or billed to them  
14 by defendants.

15 16. In truth and in fact, businesses and other entities  
16 did not order the photocopier toner that was shipped and/or  
17 billed to them by defendants.

18 17. Therefore, the representations set forth in  
19 paragraph 15 are false and misleading and constitute  
20 deceptive acts or practices in violation of Section 5(a) of  
21 the FTC Act, 15 U.S.C. § 45(a).

22 COUNT II

23 18. In numerous instances, in connection with the sale,  
24 offering for sale or distribution of nondurable office  
25 supplies, including photocopier toner, defendants have  
26

1 represented, expressly or by implication through, *inter alia*,  
2 invoices, telephone calls, letters and packing slips, that  
3 the amount of photocopier toner billed to consumers is the  
4 same as the amount shipped.

5 19. In truth and in fact, in numerous instances, the  
6 amount of photocopier toner billed to consumers is greater  
7 than the amount shipped.

8 20. Therefore, the representations set forth in  
9 paragraph 18 are false and misleading and constitute  
10 deceptive acts or practices in violation of Section 5(a) of  
11 the FTC Act, 15 U.S.C. § 45(a).

#### 12 VIOLATIONS OF THE TELEMARKETING SALES RULE

13 21. In the Telemarketing Act, 15 U.S.C. § 6101 *et seq.*,  
14 Congress directed the Commission to prescribe rules  
15 prohibiting deceptive and abusive telemarketing acts or  
16 practices. On August 16, 1995, the Commission promulgated  
17 the Telemarketing Sales Rule, 16 C.F.R. Part 310, with a  
18 Statement of Basis and Purpose, 60 Fed. Reg. 43842  
19 (August 23, 1995). The Telemarketing Sales Rule became  
20 effective December 31, 1995, and since then has remained in  
21 full force and effect.

22 22. Telephone calls between a telemarketer and a  
23 business that involve the retail sale of nondurable office  
24 supplies are subject to the Telemarketing Sales Rule's  
25 prohibitions against deceptive and abusive telemarketing acts  
26

1 or practices. 16 C.F.R. § 310.6(g). In its Statement of  
2 Basis and Purpose for the Telemarketing Sales Rule, the  
3 Commission stated that:

4 . . . the Commission's enforcement experience  
5 against deceptive telemarketers indicates that  
6 office and cleaning supplies have been by far  
7 the most significant business-to-business  
8 problem area: such telemarketing falls within  
9 the Commission's definition of deceptive  
10 telemarketing acts or practices.

11 60 Fed. Reg. 43842, 43861 (Aug. 23, 1995).

12 23. The Telemarketing Sales Rule prohibits sellers and  
13 telemarketers from making a false or misleading statement to  
14 induce any person to pay for goods or services. 16 C.F.R.  
15 § 310.3(a)(4).

16 24. The Telemarketing Sales Rule requires telemarketers  
17 in outbound telephone calls to disclose promptly and in a  
18 clear and conspicuous manner the identity of the seller.  
19 16 C.F.R. § 310.4(d)(1).

20 25. The Telemarketing Sales Rule also requires  
21 telemarketers in outbound telephone calls to disclose  
22 promptly and in a clear and conspicuous manner that the  
23 purpose of the call is to sell goods and services. 16 C.F.R.  
24 § 310.4(d)(2).





1 photocopier toner the price the consumer has been paying;  
2 (d) the consumer ordered the toner that was shipped and/or  
3 billed to the consumer by the defendants, and (e) if the  
4 consumer wants to return a shipment, the consumer has an  
5 obligation to pay a restocking fee, thereby violating  
6 16 C.F.R. § 310.3(a)(4).

7 **COUNT IV**

8 **FAILURE TO DISCLOSE SALES PURPOSE OF CALL**

9 30. In numerous instances in connection with the  
10 telemarketing of nondurable office supplies, including  
11 photocopier toner, defendants in "outbound telephone calls,"  
12 as that term is defined in the Telemarketing Sales Rule,  
13 16 C.F.R. § 310.2(n), have failed to disclose promptly and in  
14 a clear and conspicuous manner to the person receiving the  
15 call that the purpose of the call is to sell goods, thereby  
16 violating 16 C.F.R. § 310.4(d)(2).

17 **COUNT V**

18 **FAILURE TO DISCLOSE THE IDENTITY OF THE SELLER**

19 31. In numerous instances in connection with the  
20 telemarketing of nondurable office supplies, including  
21 photocopier toner, defendants in "outbound telephone calls,"  
22 as that term is defined in the Telemarketing Sales Rule,  
23 16 C.F.R. § 310.2(n), have failed to disclose promptly and in  
24 a clear and conspicuous manner their identity to the person  
25  
26

1 receiving the call, thereby violating 16 C.F.R.  
2 § 310.4(d)(1).

3 COUNT VI

4 USE OF THREATS, INTIMIDATION OR PROFANE OR OBSCENE LANGUAGE

5 32. In numerous instances in connection with the  
6 telemarketing of nondurable office supplies, including  
7 photocopier toner, defendants have used threats, intimidation  
8 or profane or obscene language, including, but not limited  
9 to, harassing telephone calls and unfounded threats that  
10 defendants will (a) refer the matter to a collection agency,  
11 (b) ruin the business consumer's credit rating, or (c) take  
12 legal action, thereby violating 16 C.F.R. § 310.4(a)(1).

13 CONSUMER INJURY

14 33. Consumers throughout the United States have  
15 suffered substantial monetary loss as a result of defendants'  
16 unlawful acts or practices. In addition, defendants have  
17 been unjustly enriched as a result of their unlawful  
18 practices. Absent injunctive relief by this Court,  
19 defendants are likely to continue to injure consumers and  
20 harm the public interest.

21 THIS COURT'S POWER TO GRANT RELIEF

22 34. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b),  
23 empowers the Court to grant injunctive and other equitable  
24 ancillary relief, including consumer redress, disgorgement,  
25  
26

1 and restitution, to prevent and remedy violations of any  
2 provision of law enforced by the Commission.

3 35. Section 19 of the FTC Act, 15 U.S.C. § 57b,  
4 authorizes this Court to award such relief as is necessary to  
5 redress the injury to consumers or others resulting from  
6 defendants' violations of the Telemarketing Sales Rule,  
7 including the rescission and reformation of contracts and the  
8 refund of monies.

9 36. The Court, in the exercise of its equitable  
10 jurisdiction, may award other ancillary relief to remedy  
11 injury caused by defendants' violations.

12 **PRAYER FOR RELIEF**

13 Wherefore, Plaintiff requests that this Court, as  
14 authorized by Sections 13(b) and 19 of the FTC Act, 15 U.S.C.  
15 §§ 53(b) and 57b, and Section 6(b) of the Telemarketing Act,  
16 15 U.S.C. § 6105(b), and pursuant to its own equitable  
17 powers:

18 1. Award plaintiff such temporary preliminary  
19 injunctive and ancillary relief as may be necessary to avert  
20 the likelihood of consumer injury during the pendency of this  
21 action, and to preserve the possibility of effective final  
22 relief;

23 2. Permanently enjoin the defendants from violating  
24 the Telemarketing Sales Rule and the FTC Act, as alleged  
25 herein;

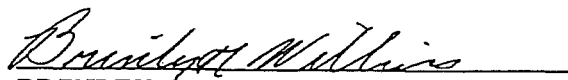
1           3.   Award such relief as the Court finds necessary to  
2 redress injury to consumers resulting from the defendants'  
3 violations of the Telemarketing Sales Rule and the FTC Act,  
4 including, but not limited to, rescission of contracts, the  
5 refund of monies paid, and the disgorgement of ill-gotten  
6 monies; and

7           4.   Award plaintiff the costs of bringing this action,  
8 as well as such other and additional equitable relief as the  
9 Court may determine to be just and proper.

10  
11  
12   DATE: \_\_\_\_\_

Respectfully submitted,

13           DEBRA A. VALENTINE  
14           General Counsel

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16             
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