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UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

FILED
U.S. DISTRICT COURT
MIDDLE DISTRICT OF TENN.

DEC 07 1999

BY _____
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_____)
 FEDERAL TRADE COMMISSION,)
)
 Plaintiff,)
 v.)
)
 LASER EXPRESS OF TENNESSEE, LTD., INC.,)
 a Tennessee corporation,)
 d/b/a Laser Express Limited,)
 Data Supply International,)
 Cartridge Express Limited,)
 International Cartridge Supply,)
 International Data Supply Company)
 International Supply Company; and)
)
 JEFF RICHFIELD,)
 individually and as an officer of Laser Express of)
 Tennessee, Ltd., Inc.,)
)
 Defendants.)
 _____)

Civil No. ~~8~~-99 1135

JUDGE NIXON

X000015

COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF

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

1. This is an 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 et seq., to secure preliminary and permanent injunctive relief, rescission of contracts, restitution, disgorgement, and other equitable relief for defendants' deceptive 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," 16 C.F.R. Part 310, in connection with the sale of nondurable office supplies.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter pursuant to 15 U.S.C. §§ 45(a), 53(b), 57b, 6102(c), and 6105(b), and 28 U.S.C. §§ 1331, 1337(a) and 1345.

3. Venue in the United States District Court for the Middle District of Tennessee is proper under 15 U.S.C. § 53(b), and 28 U.S.C. §§ 1391(b) and (c).

PLAINTIFF

4. Plaintiff Federal Trade Commission is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58. The Commission 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 Commission also enforces the Telemarketing Sales Rule, 16 C.F.R. Part 310, which prohibits deceptive or abusive telemarketing practices. The Commission may initiate federal district court proceedings by its own attorneys to enjoin violations of the FTC Act

and the Telemarketing Sales Rule and to secure such equitable relief as may be appropriate in each case, including restitution for injured consumers. 15 U.S.C. §§ 53(b), 57b and 6105(b).

DEFENDANTS

5. Defendant Laser Express of Tennessee, Ltd., Inc., ("Laser Express"), is a Tennessee corporation with its last known principal office located at 4904 Thoroughbred Lane, Brentwood, Tennessee 37207. Defendant Laser Express has done business as Laser Express Limited, Data Supply International, Cartridge Express Limited, International Cartridge Supply, International Data Supply Company, and International Supply Company. Defendant Laser Express transacts or has transacted business in the Middle District of Tennessee.

6. Defendant Jeff Richfield is an owner and the president of Laser Express. Individually or in concert with others, he has formulated, directed, controlled or participated in the acts and practices of the corporate defendant, including the various acts and practices set forth herein. Defendant Richfield resides and transacts or has transacted business in the Middle District of Tennessee.

COMMERCE

7. At all times material hereto, defendants have been engaged in the business of offering for sale and selling, through telemarketers, nondurable office supplies, including but not limited to laser printer toner cartridges, fax machine toner cartridges, and photocopier toner, in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS' BUSINESS ACTIVITIES

8. Since at least 1995 and continuing thereafter, defendants Laser Express and Jeff Richfield have engaged in a plan, program or campaign to sell nondurable office supplies, including but not limited to laser printer toner cartridges, fax machine toner cartridges, and photocopier toner, via interstate telephone calls, throughout the United States.

9. Defendants, directly or through sales representatives, have contacted various organizations by telephone. Defendants target small and large businesses and other entities, such as charitable organizations and governmental agencies. In numerous instances, defendants have made false and misleading statements to induce businesses and other entities to order and/or pay for office supplies.

10. In numerous instances, defendants, directly or through their sales representatives, contact someone within the business or other entity to try to induce a purchase of office supplies, then either (1) ship unordered merchandise and an invoice to the business and other entity, listing as "buyer" the name of the person contacted; or (2) ship more merchandise than was ordered.

11. In numerous instances, defendants, directly or through their sales representatives, state that they are calling the business or other entity's employee to confirm an order placed by the employee's predecessor when none had been previously placed. The product is shipped with an invoice, and the business or other entity often pays the amount.

12. In numerous instances, defendants, directly or through their sales representatives, represent to an employee of the business or other entity that they are calling either from within the employee's organization or as an outside vendor and want to send to the employee extra office supplies that the organization already has on hand or has already ordered.

In fact, defendants are not associated with the business or other entity, and there are no extra office supplies that already exist within the business or other entity or that were already ordered; defendants ship new office supplies along with an invoice for the supplies.

13. In numerous instances, defendants, directly or through their sales representatives, state or imply that they are the business or other entity's regular supplier or are affiliated with or have a relationship with the business or other entity's regular office supply company. In fact, defendants are not the business or other entity's regular supplier and are not affiliated with or do not have a relationship with the regular supplier of the business or other entity.

14. In numerous instances, defendants, directly or through their sales representatives, represent that the business or other entity can purchase these office supplies at a better price than it is getting from other sources. In fact, the price charged by defendants is usually higher, and in many cases substantially higher, than the business or other entity is charged by its regular supplier.

15. In numerous instances, defendants, directly or through their sales representatives, state that the office supplies that they are selling last 1 ½ to 2-3 times longer than the office supplies that the business or other entity is currently using.

VIOLATIONS OF SECTION 5(a) OF FTC ACT

COUNT I

16. In numerous instances in connection with the sale, offering for sale, or distribution of nondurable office supplies, including but not limited to laser printer toner cartridges, fax machine toner cartridges, and photocopier toner, defendants have represented, expressly or by

implication, through, inter alia, telephone calls, letters, invoices, packing slips, and/or shipment of office supplies, that businesses and other entities ordered the office supplies that were shipped and/or billed to them by defendants.

17. In truth and in fact, businesses and other entities did not order the office supplies that were shipped and/or billed to them by defendants.

18. Therefore, the representations set forth in paragraph 16 are false and misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

VIOLATIONS OF THE TELEMARKETING SALES RULE

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

20. Telephone calls between a telemarketer and a business that involve the retail sale of nondurable office supplies are subject to the Telemarketing Sales Rule's prohibitions against deceptive and abusive telemarketing acts or practices. 16 C.F.R. § 310.6(g). In its Statement of Basis and Purpose for the Telemarketing Sales Rule, the Commission stated that:

the Commission's enforcement experience against deceptive telemarketers indicates that office and cleaning supplies have been by far the most significant

business-to-business problem area: such telemarketing falls within the Commission's definition of deceptive telemarketing acts or practices.

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

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

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

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

24. 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), violations of the Telemarketing Sales Rule constitute unfair or deceptive acts or practices in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

25. Defendants are "telemarketers" or "sellers" engaged in "telemarketing" as those terms are defined in the Telemarketing Sales Rule, 16 C.F.R. § 310.2(r), (t) and (u).

COUNT II

FALSE AND MISLEADING STATEMENTS TO INDUCE PAYMENT

26. In numerous instances in connection with the telemarketing of nondurable office supplies, including but not limited to laser printer toner cartridges, fax machine toner cartridges, and photocopier toner, defendants have made false or misleading statements to induce the businesses and other entities to pay for the office supplies, including but not limited to misrepresenting, directly or by implication, (a) that the business or other entity ordered the office supplies that were shipped by defendants; (b) that the defendants are the business or other entity's regular supplier of office supplies or are associated with the business or other entity's regular supplier of office supplies; (c) that the supplies shipped and/or billed by defendants are being sold at a better price than could be obtained from the business or other entity's regular supplier;

(d) that the office supplies shipped by defendants will last 1 ½ to 2-3 times longer than the office supplies that the business or other entity has previously purchased from other sources; and

(e) that the business or other entity is obligated to pay for the office supplies shipped to the business or other entity, thereby violating 16 C.F.R. § 310.3(a)(4).

COUNT III

FAILURE TO DISCLOSE SALES PURPOSE OF CALL

27. In numerous instances in connection with the telemarketing of nondurable office supplies, including but not limited to laser printer toner cartridges, fax machine toner cartridges, and photocopier toner, defendants in "outbound telephone calls" as that term is defined in the

Telemarketing Sales Rule, 16 C.F.R. § 310.2(n), have failed to disclose promptly and in a clear and conspicuous manner to the person receiving the call that the purpose of the call is to sell goods, thereby violating 16 C.F.R. § 310.4(d)(2).

COUNT IV

FAILURE TO DISCLOSE THE IDENTITY OF THE SELLER

28. In numerous instances in connection with the telemarketing of nondurable office supplies, including but not limited to laser printer toner cartridges, fax machine toner cartridges, and photocopier toner, defendants in “outbound telephone calls,” as that term is defined in the Telemarketing Sales Rule, 16 C.F.R. § 310.2 (n), have failed to disclose promptly and in a clear and conspicuous manner their identity to the person receiving the call, thereby violating 16 C.F.R. § 310.4 (d) (1).

CONSUMER INJURY

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

THIS COURT'S POWER TO GRANT RELIEF

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

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

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

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

PRAYER FOR RELIEF

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

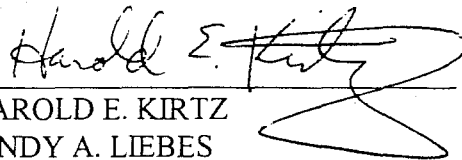
1. Award plaintiff such temporary preliminary injunctive and ancillary relief as may be necessary to avert the likelihood of consumer injury during the pendency of this action and to preserve the possibility of effective final relief;
2. Permanently enjoin the defendants from violating the Telemarketing Sales Rule and the FTC Act, as alleged herein;
3. Award such relief as the Court finds necessary to redress injury to consumers resulting from the defendants' violations of the Telemarketing Sales Rule and the FTC Act, including but not limited to, rescission of contracts, the refund of monies paid, and the disgorgement of ill-gotten monies; and

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

Dated: Dec. 7, 1999

Respectfully submitted,

DEBRA A. VALENTINE
General Counsel



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