UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

MATTHEW J. LOEWEN, 0803065 B.C. Ltd., 0881046 B.C. Ltd., ReadyPay

Background

Plaintiff Federal Trade Commission (FTC) brings this action against Defendants Matthew J. Loewen and his companies 0803065 B.C. Ltd., 0881046 B.C. Ltd., ReadyPay Services, Inc., and Xavier Processing Services, LLC, alleging violations of Section 5 of the FTC Act, 15 U.S.C § 45, and the Telemarketing Sales Rule, 16 C.F.R. Pt. 310. According to the FTC, Loewen used these companies to operate a telemarketing scheme that defrauded the sellers of vehicles on Craigslist.org and similar websites in three principal ways, each of which allegedly gives rise to liability under both the FTC Act and the Telemarketing Sales Rule. (Pl's Mot. Summ. Judg. at 14–17, Dkt. No. 57 at 21–24.) The FTC alleges first, that Loewen's telemarketers (doing business as such entities as Auto Marketing Group and Vehicle Stars) contacted the Craigslist sellers and fraudulently offered to match them with specific buyers; second, that the telemarketers falsely represented that a sale would be accomplished within a short period of time; and third, that they sold refund guarantees for an additional fee, but that due to undisclosed conditions, those refunds were nearly impossible to redeem. (Id.) With regard to each defendant, the FTC alleges that Defendants ReadyPay Services, Inc., and Xavier Processing Services, LLC, provided substantial assistance to Loewen's telemarketers in violation of the Telemarketing Sales Rule; the Loewn is personally liable; and that all Defendants operated as a common enterprise.

The FTC previously brought two motions for temporary restraining orders (Dkt. Nos. 3, 8), which this Court denied because at the time there was insufficient evidence in the record to demonstrate that Loewen's activities continued past the purported sale of his telemarketing business in November 2011. (Dkt. No. 7; Dkt. No. 39 at 4–5, 6.) The FTC also brought a motion for sanctions against Defendants based on their failure to participate fully in discovery (Dkt. No.

53), which this Court granted. (Dkt. No. 55.) The FTC now moves for summary judgment or, in the alternative, to strike Defendant's answer and enter defaults against each Defendant for failure to comply with this Court's sanctions order. (Dkt. No. 56; Dkt. No. 57.) Loewen is now proceeding pro se, and has not responded to Plaintiff's motion for summary judgment.

Facts

I. The Telemarketing Scheme

In part because Defendants declined to fully participate in discovery (see Pl's Second Mot. for Sanctions, Dkt. No. 57 at 2, 3 n.1), the FTC relies on the declarations of individuals who were contacted by Loewen's telemarketing entities to establish the outline of the pitch. (See Pl's Vol. I, Ex. 1–11, Dkt. No. 40-2 at 3–140.) In the initial pitch, Loewen's telemarketers contacted people who were attempting to sell used vehicles on Craiglist.org or similar websites. (Dkt. No. 40-2 at 3;

company's access to purchasers who were not in a position to respond directly to the seller's online ad. (See Dkt. No. 40-2 at 3; id. at 28; id. at 33–34; id. at 72; id. at 82; id. at 93.) Representing the transaction as nearly risk-free, the telemarketer told the seller that the $399 fee would become a refundable deposit with the purchase of additional insurance for $99. (Dkt. No. 40-2 at 29; id. at 33–34; id. at 56; id. at 64–65; id. at 72; id. at 83; id. at 93–94; id. at 103–04; id. at 123; id. at 135; see also id. at 3-4 [base price characterized as refundable deposit and only at the verification stage did the caller mention the $99 insurance].)

According to representations that Loewen's companies made to credit card companies and regulators prior to this lawsuit and that Loewen submitted to this Court in the case's early stages, a formal proposal email was sent to prospective clients at the time of the initial pitch and before their credit card was charged. (See Dkt. No. 40-2 at 17–18; Declaration of Walter Kean, Dkt. No. 30-1 at 8–9; id. at 21; id. at 23–25.) However, the record does not show that clients regularly received such emails prior to credit card confirmation or that the emails listed any of the otherwise undisclosed eligibility requirements that were attached to the guarantee. (Compare, e.g., Dkt. No. 40-2 at 17–18 [purported proposal email provided by Auto Marketing Group to credit card company after the charge was disputed, listing two requirements for post-confirmation registration

challenged buyers of vehicles, as the telemarketers had suggested. Indeed, Loewen‘s manager previously represented to this Court that the verification script used by the telemarketers included a standard admission that there was no buyer for the vehicle and that the seller was instead entering into a contract to

(Dkt. No. 56-2 at 23:19–25:7.) In 2007 Loewen opened a merchant account for Kean at payment processor Orion Payment Systems in the name of ReadyPay, using a D/B/A (–Boy [sic] Great Auto‖) very similar to the D/B/A then used by Kean (–Buy Great Autos‖). (Pl's Vol. II, Ex. 13, Attach. 11, Dkt. 40-4 at 24–25; Dkt. No. 56-2 at 96:4–13, 115–16; Pl's Vol. III, Ex. 14, Dkt. No. 40-5 at 4–5.) As Loewen conceded at his deposition, opening a merchant account in a name other than that of the actual merchant is not typical in the credit card processing industry; the practice is resorted to when the merchant is unable to open an account in its own name. (Dkt. No. 56-2 at 88:3–6; 90:16–21.)

During the period Loewen was providing payment processing to Kean, he further assisted the operation by regularly changing the D/B/As for the ReadyPay merchant account. (Dkt. No. 40-5 at 30.) This rotation of names helped to ensure that clients would not encounter –bad publicity on the Internet‖ for the D/B/A currently in operation. (Dkt. No. 56-2 at 143:14–144:13.) In February 2010, Loewen obtained a

Publications, Inc., 99 F. Supp. 2d 1176, 1202 (C.D. Cal. 2000) (citing fictitious business names as a key fact helping to demonstrate defendants' unfair business practices in violation of the FTC Act). The FTC has thus demonstrated that no genuine issue of material fact exists with respect to Defendant's liability under the FTC Act.

Similarly, no genuine issue exists with respect to Defedants' liability under the Telemarketing Sales Rule (TSR). The TSR prohibits telemarketers from, among other acts, –[m]aking a false or misleading statement to induce any person to pay for goods or services.‖ 16 C.F.R. § 310.3(a)(4). Statements 1 and 3 were at minimum misleading, as described above, and were made in order to persuade customers to pay hundreds of dollars to Loewen's companies. Similarly, Defendants' promise to match buyers with sellers violated the provision of the TSR prohibiting material misrepresentations regarding the –nature[ ] or central characteristics‖ of the service, 16 C.F.R. § 310.3(a)(2)(iii), and Defendants' representations about the refund insurance program violated the provision of the TSR prohibiting material representations regarding the terms of the seller's refund policies. 16 C.F.R. § 310.3(a)(2)(iv).

III. Liability of Each Defendant

The 9th Circuit test for individual liability for injunctive and monetary relief depends in part on a determination of corporate liability. See Stefanchik, 559 F.3d at 931. Here, the lines between the four corporate defendants, which were all controlled solely by Loewen and shared employees and funds, were blurred to the point where they can only be considered a common enterprise. See FTC v. Network Servs. Depot, Inc., 617 F.3d 1127, 1142–43 (9th Cir. 2010) (finding a common enterprise where corporate defendants pooled resources, staff, and funds, were controlled by the same individuals, and participated in the same deceptive acts). Each can therefore be held liable for the deceptive practices of the others.

practices even if he did not exercise it. He can thus be held personally liable for both injunctive and monetary relief.

IV. Relief

including a permanent injunction enjoining Defendants from violating the provisions of the FTC Act and the TSR and from engaging in telemarketing and payment processing, and monetary relief totaling $5,109,366.62. The Court adopts and incorporates the FTC's proposed order as part of this ruling. Because the Court grants summary judgment in favor of Plaintiff, the Court declines to consider Plaintiff's motion in the alternative to strike Defendants' answer and enter default.

The clerk is ordered to provide copies of this order to Defendants and all counsel.

Dated this 29th day of October, 2013.

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Marsha J. Pechman
Chief United States District Judge