

**UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF IOWA
DAVENPORT DIVISION**

FEDERAL TRADE COMMISSION,)	
6th and Pennsylvania Avenue N.W.)	
Washington, DC 20580,)	
and)	
STATE OF WISCONSIN,)	
123 West Washington Avenue)	
Madison, Wisconsin 53702,)	
Plaintiffs,)	
v.)	Civil Action No.
DANIEL B. LUBELL,)	COMPLAINT FOR
individually, and as the manager of the)	PERMANENT INJUNCTION
limited liability company named below, and d/b/a)	AND OTHER
MERCANTILE MESSAGING and)	EQUITABLE RELIEF
D B & L, Inc.,)	
2943 Oxford Drive)	
Bettendorf, Iowa 52722,)	
and)	
MERCANTILE MESSAGING, L.L.C.,)	
an Illinois limited liability company,)	
1800 3rd Avenue, Suite 418)	
Rock Island, Illinois 61201,)	
Defendants.)	
)	

Plaintiffs, the Federal Trade Commission ("FTC" or "the Commission"), and the State of Wisconsin, for their complaint allege:

1. The Commission brings this action under Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C.

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 and practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the Commission

proceedings to enjoin telemarketing that violates the FTC's Telemarketing Sales Rule and, in each such case, to obtain damages, restitution and other compensation on behalf of residents of the State of Wisconsin, and to obtain such further and other relief as the court may deem appropriate. 15 U.S.C. § 6103(a).

DEFENDANTS

7. Defendant Daniel BLubell has conducted business as Mercantile Messaging and as D B & L, Inc., a lapsed Iowa corporation. In November 1996, he organized and registered an Illinois limited liability company called Mercantile Messaging, L.L.C. Lubell is named as the manager of that company. He resides and has transacted business within the Southern District of Iowa. At all times material to this complaint, acting alone or in concert with others, he has formulated, directed, controlled, or participated in the acts and practices set forth in this complaint.

8. Mercantile Messaging, L.L.C. is a limited liability company, registered in Illinois. Its principal place of business is 1800 3rd Avenue, Suite 418, Rock Island, Illinois 61201. Lubell and Mercantile Messaging, L.L.C. also use the address 4343 16th Street, Suite 150, Moline, Illinois 61265, which is the address of a mailbox company called Mailboxes & Parcel Depot.

COMMERCE

9. At all times relevant to this complaint, defendants have maintained a substantial course of trade, advertising, offering for sale and selling information via international telephone lines, in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C.

consumers that calling the stated telephone number neither enters them in the sweepstakes nor provides them any additional information about how to enter.

13. Consumers who call any of the advertised international telephone numbers hear a 15-minute, repetitive, recorded message that promises to provide information about the travel sweepstakes but, in fact, mainly provides information concerning airline bumping on oversold flights and how that

16. In the course of advertising, offering for sale or selling information, defendants represent to consumers, directly or by implication, that by placing a call to a specified number, a consumer may enter defendants' purported sweepstakes.

17. In truth and in fact, a consumer cannot enter defendants' purported sweepstakes by placing a call to the specified number. The sole method of entry in defendants' purported sweepstakes is by mail, and even consumers who call defendants' stated telephone number, incurring substantial costs for the call, must still enter by mail.

18. Therefore, defendants' representations, as set forth in paragraph 16, above, are false and deceptive, in violation of Section 5 of the FTC Act, 15 U.S.C. § 45.

COUNT II
(By Plaintiff Federal Trade Commission)

19. In numerous instances, in the course of advertising, offering for sale and selling information, defendants have represented, directly or by implication, that consumers who call their specified numbers will receive information about how to fly free on commercial airlines.

20. Defendants have failed to disclose the material fact that, in order to benefit from such information, consumers must first incur costs, including the cost of an airline ticket, with no assurance that they will then be able to obtain the equivalent of a free ticket.

21. In view of defendants' representations that consumers will receive information about how to fly free, as set forth in paragraph 19, above, defendants' failure to disclose the material information set forth in paragraph 20 is deceptive, in violation of Section 5 of the FTC Act, 15 U.S.C. § 45.

COUNT III

(By Plaintiff Federal Trade Commission)

22. In numerous instances, in the course of advertising, offering for sale or selling information, defendants have represented, directly or by implication, that they do not charge for the information they provide.

23. In truth and in fact, defendants do charge for the information they provide. Defendants sell information for a fee paid by consumers to defendants through the telephone billing and collection process. The foreign telephone carrier pays defendants a portion of the revenues it receives from consumers for calls placed to defendants' international telephone lines.

24. Therefore, defendants

[t]hat no purchase or payment is necessary to be able to win a prize or participate in a prize promotion if a prize promotion is offered. . . ." 16 C.F.R. § 310.4(d).

28. The Telemarketing Sales Rule also requires a telemarketer "[b]efore a customer pays for goods or services offered . . . to disclose, in a clear and conspicuous manner . . . [t]he total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of the sales offer. . . ." 16 C.F.R. § 310.3(a)(1)(f).

29. 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 deceptive or unfair acts or practices in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

DEFENDANTS VIOLATIONS OF THE TELEMARKETING SALES RULE

COUNT IV

(By Plaintiffs Federal Trade Commission and the State of Wisconsin)

30. In the course of telemarketing, in numerous instances since December 31, 1995, defendants have failed to disclose in their outbound automated telephone calls that the purpose of the call is to sell information about travel sweepstakes and other free and discount travel.

31. Defendants' failure to make the "required oral disclosures" in outbound telephone calls is an "abusive telemarketing act or practice" in violation of Section 310.4(d)(2) and (3) of the Telemarketing Sales Rule, 16 C.F.R.

COUNT V
(By Plaintiffs Federal Trade Commission and the State of Wisconsin)

32. In the course of telemarketing, in numerous instances since December 31, 1995, defendants have failed to disclose, in a clear and conspicuous manner, before a customer pays for goods or services offered, the total costs to purchase, receive, or use, and the quantity of, goods or services that are the subject of the sales offer.

33. Defendants' failure to disclose in their solicitations the total cost of the information telephone call is a "prohibited deceptive act or practice" in violation of Section 310.3(a)(1)(i) of the Telemarketing Sales Rule, 16 C.F.R. § 310.3(a)(1)(i).

CONSUMER INJURY

34. Consumers in many areas of the United States, including in the State of Wisconsin, have suffered monetary loss as a result of defendants' unlawful acts or practices. Absent injunctive relief by this Court, defendants are likely to continue to injure consumers and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

35. Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, and Section 6(b) of the Telemarketing Act, 15 U.S.C. §

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

Dated: December_____, 1996

Respectfully submitted,
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