

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

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FEDERAL TRADE COMMISSION,)
)
Plaintiff,)
)
v.)
)
S.J.A. SOCIETY, INC.,)
doing business as)
Apex Marketing Group,)
Atlantic Service Corp.,)
ASC, and Publishers Service,)
)
Thomas P. Johnson,)
individually, and as an officer)
and director of said corporation,)
and)
Thomas Alan Blair,)
d/b/a Advance Communications,)
individually, and as general)
manager of S.J.A. Society, Inc.,)
)
Defendants.)
<hr/>)

Civ. No.
Judge:

**COMPLAINT FOR
PERMANENT INJUNCTION
AND CONSUMER REDRESS**

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Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), for its complaint alleges:

1. The Commission brings this action under Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, the Telemarketing and Consumer Fraud and Abuse Prevention Act ("

restitution, disgorgement, appointment of a receiver, and other equitable relief for defendants' unfair or deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a); the FTC's Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310, and the FDCPA, 15 U.S.C. § 1692.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 53(b), 57b, 6102(c), 6105(b), and 16921.

3. Venue in the Eastern District of Virginia is proper under 28 U.S.C. §§ 1391(b) and (c), and 15 U.S.C. § 53(b).

PLAINTIFF

4. Plaintiff, FTC, is an independent agency of the United States Government created by statute. 15 U.S.C. § 41 *et seq.* The Commission is charged, *inter alia*, with enforcement of

enjoin violations of the FTC Act, the TSR, and the FDCPA to secure such equitable relief as may be appropriate in each case, and to obtain consumer redress. 15 U.S.C. §§ 53(b), 57b, 6102(c), 6105(b), and 16921.

DEFENDANTS

5. Defendant S.J.A. Society, Inc. is a Virginia corporation that does or has done business as Apex Marketing Group, Atlantic Service Corp, ASC, and Publishers Service ("SJA"). SJA's principal place of business is located at 505 S. Independence Boulevard, Suite 103, Virginia Beach, VA 23452. SJA transacts or has transacted business in the Eastern District of Virginia.

6. Defendant Thomas P. Johnson ("Johnson") is the president and director of defendant SJA. 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 of SJA, including the acts and practices set forth in this complaint. Johnson transacts or has transacted business in the Eastern District of Virginia.

7. Defendant Thomas Alan Blair ("Blair") has been the general manager and a supervisor for defendant SJA. 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 of SJA, including the acts and practices set forth in this complaint. Blair also has done business as Advance Communications. Blair transacts or has transacted business in the Eastern District of Virginia.

COMMERCE

8. At all times relevant to this complaint, defendants have maintained a substantial course of trade in the offering for sale and sale, through telemarketing, of magazine subscriptions, in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS' BUSINESS PRACTICES

9. Since at least 1992, defendants have telemarketed, directly or through third parties, magazine subscriptions throughout the United States.

10. To induce consumers to accept defendants' magazine subscriptions and to pay "shipping and handling" costs of \$1.89 to \$2.65 per week, defendants' telemarketers represent that consumers have won or are entitled to receive a prize, cash, free airline tickets, or coupons, and also will receive "prepaid" subscriptions to four or five magazines.

11. Defendants' telemarketers request that consumers provide either their credit card number or their checking

account number to allow defendants to charge the consumers' credit card accounts or debit their checking accounts on a monthly basis for shipping and handling costs.

12. In some instances, defendants charge consumers' credit

consumers to repeated harassment, including threatening litigation and mailing Warrants in Debt.

VIOLATIONS OF SECTION 5 OF THE FTC ACT
COUNT I

16. In numerous instances, in connection with the telemarketing of magazine subscriptions to consumers, defendants have represented, expressly or by implication, that:

- a. consumers have won or will receive a prize, cash, free airline tickets, or coupons;
- b. consumers pay only shipping and handling fees for defendants' magazine subscriptions; and
- c. consumers may cancel the magazine subscriptions.

17. In truth and in fact, in numerous instances:

- a. consumers have not won and do not receive a prize, cash, free airline tickets, or coupons;
- b. consumers do not pay only shipping and handling fees for defendants' magazine subscriptions, but, in fact, pay more than shipping and handling fees for defendants' magazine subscriptions; and
- c. consumers cannot cancel the magazine subscriptions.

18. Therefore, defendants' representations, as 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).

COUNT II

19. In numerous instances, in the course of collecting money from consumers, in connection with offering for sale or selling magazine subscriptions, defendants have represented to consumers, expressly or by implication, that consumers are bound by contract to pay for multi-year magazine subscriptions.

20. In truth and in fact, in numerous instances, consumers are not bound by contract to pay for multi-year magazine subscriptions.

21. Therefore, defendants' representation, as set forth in paragraph 19, is false and misleading and constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

THE FTC'S TELEMARKETING SALES RULE

22. 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 TSR, 16 C.F.R. Part 310. The TSR became effective on December 31, 1995.

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

24. The TSR prohibits telemarketers and sellers 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).

25. The TSR also prohibits telemarketers and sellers from misrepresenting "[a]ny material aspect of the nature or terms of the seller's refund [or] cancellation . . . policy." 16 C.F.R. § 310.3(a)(2)(iv).

26. The TSR also requires telemarketers and sellers to disclose, prior to a customer paying for goods or services, "[i]f the seller has a policy of not making refunds [or] cancellations . . . a statement informing the customer that this is the seller's policy; or, if the seller makes a representation about a refund [or] cancellation . . . policy, a statement of all material terms and conditions of such policy." 16 C.F.R. § 310.3(a)(1)(iii).

27. The TSR also prohibits telemarketers and sellers from obtaining or submitting "for payment a check, draft, or other form of negotiable paper drawn on a person's checking, savings, share, or similar account, without that person's express verifiable authorization." 16 C.F.R. § 310.3(a)(3).

28. 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 TSR 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).

**VIOLATIONS OF THE TELEMARKETING SALES RULE
COUNT III**

29. In numerous instances, in connection with the telemarketing of magazine subscriptions, defendants have represented, expressly or by implication, that:

- a. consumers have won or will receive a prize, cash, free airline tickets, or coupons; and
- b. consumers pay only shipping and handling fees for defendants' magazine subscriptions.

30. In truth and in fact, in numerous instances:

- a. consumers have not won and do not receive a prize, cash, free airline tickets, or coupons; and
- b. consumers do not pay only shipping and handling fees for defendants' magazine subscriptions, but,

induce a person to pay for goods or services, and are deceptive telemarketing acts or practices in violation of § 310.3(a)(4), 16 C.F.R. § 310.3(a)(4).

COUNT IV

32. In numerous instances, in connection with the telemarketing of magazine subscriptions, defendants have falsely represented that defendants will honor consumers' requests to cancel a magazine subscription, when in fact, defendants do not honor consumers' requests to cancel a magazine subscription.

33. Therefore, defendants have engaged in a deceptive telemarketing act or practice in violation of § 310.3(a)(2)(iv), 16 C.F.R. § 310.3(a)(2)(iv).

COUNT V

34. In numerous instances, in connection with the telemarketing of magazine subscriptions, defendants have failed to disclose in a clear and conspicuous manner, before consumers pay for magazine subscriptions, that defendants have a policy of not making cancellations.

35. Therefore, defendants have engaged in a deceptive telemarketing act or practice in violation of § 310.3(a)(1)(iii), 16 C.F.R. § 310.3(a)(1)(iii).

COUNT VI

36. In numerous instances, in connection with the telemarketing of magazine subscriptions, defendants obtain or submit for payment a check, draft, or other form of negotiable paper drawn on a person's checking, savings, share, or similar account without that person's "express verifiable authorization," as that term is described in Section 310.3(a)(3) of the TSR, 16 C.F.R. § 310.3(a)(3).

37. Therefore, defendants have engaged in a deceptive telemarketing act or practice in violation of § 310.3(a)(3), 16 C.F.R. § 310.3(a)(3).

THE FAIR DEBT COLLECTION PRACTICES ACT

38. In 1977, Congress passed the FDCPA, 15 U.S.C. §§ 1692-1692o, which became effective on March 20, 1978, and has been in force ever since that date. Section 814 of the FDCPA, 15 U.S.C. § 1692l, authorizes the Commission to use all of its functions and powers under the FTC Act to enforce compliance with the FDCPA by any debt collector, irrespective of whether that debt collector is engaged in commerce or meets any other jurisdictional tests set by the FTC Act, including the power to enforce the provisions of the FDCPA in the same manner as if the violations were violations of a Commission trade regulation rule.

39. Defendant SJA is a creditor who, in the process of collecting its own debts, uses names other than its own name, which indicates that a third person is collecting or attempting to collect such debts, and is, therefore, a "debt collector" as that term is defined in § 803(6) of the FDCPA, 15 U.S.C. § 1692a(6).

40. The term "consumer" as used in this Complaint means any natural person obligated or allegedly obligated to pay any debt, as "debt" is defined by § 803(5) of the FDCPA, 15 U.S.C. § 1692a(5).

VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT
COUNT VII

41. In numerous instances, in connection with the collection of debts, defendants SJA and Johnson have communicated with consumers at times or places known or that should have been known to be inconvenient to the consumer, including times before 8 a.m. or after 9 p.m. local time at the consumer's location, in violation of § 805(a)(1) of the FDCPA, 15 U.S.C. § 1692e(a)(1).

42. In numerous instances, in connection with the collection of debts, defendants SJA and Johnson have made false

behalf of defendants are attorneys or that letters sent to consumers on behalf of defendants are from an attorney; and 2) using a business name, company, or organization name that is other than defendants' true name, in violation of §§ 807(10), 807(3), and 807(14) of the FDCPA, 15 U.S.C. 1692e(10), 1692e(3), and 1692e(14), respectively.

43. In numerous instances, in connection with the collection of debts, defendants SJA and Johnson have filed Warrants in Debt and taken other legal action against consumers in a judicial district other than the one in which the consumer signed the contract sued upon or in which the consumer resides, in violation of § 811 of the FDCPA, 15 U.S.C. § 1692i.

CONSUMER INJURY

44. Consumers throughout the United States have suffered substantial monetary loss as a result of defendants' unlawful acts or practices. Absent injunctive relief, defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

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

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

46. Section 19 of the FTC Act, 15 U.S.C. § 57b, and Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b), authorize this Court to grant such relief as the Court finds necessary to redress injury to consumers or other persons resulting from defendants' violations of the TSR, including the rescission or reformation of contracts, and the refund of money.

47. This Court, in the exercise of its equitable jurisdiction, may award other ancillary relief to remedy the injury caused by the defendants' law 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) and 57b, Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b), Section 814 of the FDCPA, 15 U.S.C. § 16921, and pursuant to its own equitable powers:

1. Award plaintiff such preliminary injunctive and ancillary equitable 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 defendants from violating the FTC Act, the TSR, and the FDCPA, as alleged herein;

3. Award such relief as the Court finds necessary to redress injury to consumers resulting from defendants' violations of the FTC Act, the TSR, and the FDCPA, including, but not limited to, rescission or reformation of contracts, restitution, 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 relief as the Court may determine to be just and proper.

Respectfully submitted,

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