

1 JOHN D. GRAUBERT  
Acting General Counsel  
2  
3 THOMAS J. SYTA (CA Bar #116286)  
RAYMOND E. MCKOWN (CA Bar #150975)  
4 BARBARA CHUN (CA Bar #186907)  
Federal Trade Commission  
10877 Wilshire Blvd., Ste. 700  
5 Los Angeles, CA 90024  
(310) 824-4343  
6 (310) 824-4380 (fax)

7 ATTORNEYS FOR PLAINTIFF  
FEDERAL TRADE COMMISSION  
8

9 UNITED STATES DISTRICT COURT  
10 CENTRAL DISTRICT OF CALIFORNIA  
11 WESTERN DIVISION

12 \_\_\_\_\_ )  
13 FEDERAL TRADE COMMISSION )

14 Plaintiff, )

15 v. )

16 HOLIDAY PLUS TRAVEL, LLC, a )  
California company; )

17 BLAIN BURKE, individually; )

18 KEVIN M. CLARKE, individually and )  
19 as an officer of HOLIDAY PLUS )  
TRAVEL, LLC; and )

20 LIZETTE TEMPLETON, individually )  
21 and as an officer of HOLIDAY )  
PLUS TRAVEL, LLC, )

22 Defendants. )  
23 \_\_\_\_\_ )

CV  
COMPLAINT FOR INJUNCTION  
AND OTHER EQUITABLE RELIEF

1 U.S.C. §§ 53(b) and 57b, and the Telemarketing and Consumer  
2 Fraud and Abuse Prevention Act ("Telemarketing Act"), 15  
3 U.S.C. §§ 6101 *et seq.*, to secure preliminary and permanent  
4 injunctive relief, restitution, rescission or reformation of  
5 contracts, disgorgement, and other equitable relief for  
6 Defendants' deceptive acts or practices in violation of  
7 Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the  
8 FTC's Telemarketing Sales Rule, 16 C.F.R. Part 310.

9 **JURISDICTION AND VENUE**

10 2. This Court has subject matter jurisdiction pursuant  
11 to 15 U.S.C. §§ 45(a), 53(b), 57b, 6102(c), and 6105(b), and  
12 28 U.S.C. §§ 1331, 1337(a), and 1345.

13 3. Venue in the Central District of California is  
14 proper under 15 U.S.C. §§ 53(b) and 28 U.S.C. § 1391(b)  
15 and (c).

16 **PLAINTIFF**

17 4. Plaintiff, the Federal Trade Commission, is an  
18 independent agency of the United States Government created  
19 by statute. 15 U.S.C. §§ 41 *et seq.* The Commission is  
20 charged, *inter alia*, with enforcement of Section 5(a) of the  
21 FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or  
22 deceptive acts or practices in or affecting commerce. The  
23 Commission also enforces the Telemarketing Sales Rule, 16  
24 C.F.R. Part 310, which prohibits deceptive or abusive  
25 telemarketing acts or practices. The Commission is  
26 authorized to initiate federal district court proceedings,  
27 by its own attorneys, to enjoin violations of the FTC Act  
28 and violations of the Telemarketing Sales Rule, in order to

1 secure such equitable relief as may be appropriate in each  
2 case, and to obtain consumer redress, 15 U.S.C. §§ 53(b),  
3 57b, 6102(c), and 6105(b).

4 **DEFENDANTS**

5 5. Defendant Holiday Plus Travel, LLC ("HPT") is a  
6 California limited liability company with its principal  
7 place of business at 5959 West Century Boulevard, Suite 510,  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 District of California.

2 COMMERCE

3 9. At all times relevant to this complaint, Defendants  
4 have maintained a substantial course of trade in or  
5 affecting commerce, as "commerce" is defined in Section 4 of  
6 the FTC Act, 15 U.S.C. § 44.

7 DEFENDANTS' COURSE OF CONDUCT

8 10. Since at least March 1999, Defendants have operated  
9 a business enterprise that has deceived consumers throughout  
10 the United States and abroad by deceptively telemarketing  
11 vacation travel packages.

12 11. In addition to using in-house telemarketers,  
13 Defendants contract with and utilize a number of "third-  
14 party" telemarketing firms throughout the United States to  
15 sell Defendants' vacation travel packages. The contractual  
16 relationship gives Defendants control over the third-party  
17 telemarketers.

18 12. Defendants typically contact consumers by inviting  
19 them to fill out a form at a public event that enables  
20 consumers to participate in a "drawing." Defendants  
21 represent that consumers may win a valuable travel package  
22 prize. Defendants' telemarketers then contact consumers by  
23 telephone and advise them that they have won or have been  
24 specially selected to receive a vacation travel package.

25 13. During the telephone call, Defendants'  
26 telemarketers describe the contents of the vacation travel  
27 packages. The packages offer various vacations, such as a  
28 number of nights' lodging in various vacation destinations

1 such as Florida, with the use of a rental car; a cruise to  
2 the Bahamas; and mini-vacations to other destinations.

3 14. Defendants' telemarketers then inform consumers  
4 that there is an "incidental charge," typically \$350 to \$399  
5 per person, to obtain the vacation package. The  
6 telemarketers assure consumers that Defendants' vacation  
7 package is worth much more than the incidental charge.  
8 Defendants' also represent that this charge will be the  
9 total cost to obtain the vacation package. Consumers are  
10 told that the charge will be placed on their credit accounts  
11 or a debit will be made against their bank accounts to pay  
12 for the vacation package. Once the consumers' credit card  
13 numbers or bank account numbers are obtained, the charge is  
14 made against their accounts.

15 15. Defendants misrepresent or fail to disclose  
16 material terms of their refund and cancellation policies.  
17 For example, in numerous instances Defendants' telemarketers  
18 ask for and are given consumers' credit card or bank account  
19 information while assuring consumers that they can cancel  
20 the transaction. However, when consumers subsequently  
21 attempt to cancel, Defendants advise consumers that they  
22 have no right to do so. In other instances, Defendants  
23 obtain and charge consumers' credit or checking accounts  
24 before consumers are aware that HPT does not provide refunds  
25 or allow cancellations.

26 16. Defendants later send consumers confirmation  
27 materials that contain advertisements, information about the  
28 vacation locations, and travel documents that require

1 consumers to send "reconfirmation" forms to Defendants  
2 either 45 or 60 days prior to the consumers' desired travel  
3 dates. When consumers read the confirmation materials, or  
4 when they reconfirm and begin to schedule their vacations,  
5 for the first time they learn of previously undisclosed  
6 expenses imposed by Defendants, and other material terms and  
7 conditions.

8 17. Many consumers attempt to cancel their purchase of  
9 the vacation travel package at various point during  
10 Defendants' sales call, and upon receipt of the confirmation  
11 materials. Defendants routinely deny consumers' requests  
12 for refunds or cancellations.

13 **THE FEDERAL TRADE COMMISSION ACT**

14 18. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a),  
15 provides that "unfair or deceptive acts or practices in or  
16 affecting commerce are hereby declared unlawful."

17 **VIOLATIONS OF SECTION 5 OF THE FTC ACT**

18 **COUNT I**

19 19. In numerous instances since at least 1999, in  
20 connection with the advertising, marketing, promotion,  
21 offering for sale, or sale of vacation travel packages,  
22 Defendants have represented, expressly or by implication,  
23 that consumers have won or been specially selected to  
24 receive a vacation travel package.

25 20. In truth and in fact, consumers have neither won nor  
26  
27  
28



1 in "telemarketing," as those terms are defined in the  
2 Telemarketing Sales Rule, 16 C.F.R. §§ 310.2(r), (t)  
3 and (u).

4 27. The Telemarketing Sales Rule requires sellers and  
5 telemarketers "to disclose, in a clear and conspicuous  
6 manner . . . all material restrictions, limitations, or  
7 conditions to purchase, receive, or use the goods or  
8 services that are the subject of the sales offer. . . .  
9 [b]efore a customer pays for goods or services." 16 C.F.R.  
10 § 310.3(a)(1)(ii).

11 28. The Telemarketing Sales Rule also requires sellers  
12 and telemarketers to make a statement "in a clear and  
13 conspicuous manner [that] the seller has a policy of not  
14 making refunds, cancellations, exchanges, or repurchases" if  
15 that is the case "[b]efore a customer pay for goods or  
16 services." 16 C.F.R. § 310.3(a)(1)(iii).

17 29. The Telemarketing Sales Rule prohibits sellers and  
18 telemarketers from "[m]isrepresenting, directly or by  
19 implication, . . . [a]ny material aspect of the nature or  
20 terms of the seller's refund, cancellation, exchange or  
21 repurchase policies." 16 C.F.R. § 310.3(a)(2)(iv).

22 30. The Telemarketing Sales Rule also prohibits sellers  
23 and telemarketers from "[m]isrepresenting, directly or by  
24 implication, . . . [a]ny material aspect of a prize promotion  
25 including, but not limited to, the odds of being able to  
26 receive a prize, the nature or value of a prize, or that a  
27 purchase or payment is required to win a prize or to  
28 participate in a prize promotion." 16 C.F.R.



1 § 310.3(a)(2)(v).

2 31. Pursuant to Section 3(c) of the Telemarketing Act,  
3 15 U.S.C. § 6102(c), and Section 18(d)(3) of the FTC Act, 15  
4 U.S.C. § 57a(d)(3), violations of the Telemarketing Sales  
5 Rule constitute unfair or deceptive acts or practices in or  
6 affecting commerce, in violation of Section 5(a) of the FTC  
7 Act, 15 U.S.C. § 45(a).

8 **VIOLATIONS OF THE FTC TELEMARKETING SALES RULE**

9 **COUNT III**

10 32. In numerous instances, in connection with the  
11 advertising, marketing, promotion, offering for sale, or  
12 sale of vacation travel packages, Defendants have failed to  
13 disclose, in a clear and conspicuous manner before consumers  
14 pay for the vacation travel package, all material  
15 restrictions, limitations or conditions to purchase,  
16 receive, or use the goods or services that are the subject  
17 of the sales offer, including but not limited to, that the  
18 periods to travel are significantly limited due to blackout  
19 dates and other scheduling restrictions. Defendants have  
20 thereby violated Section 310.3(a)(1)(ii) of the  
21 Telemarketing Sales Rule, 16 C.F.R. § 310.3(a)(1)(ii).

22 **COUNT IV**

23 33. In numerous instances, in connection with the  
24 advertising, marketing, promotion, offering for sale, or  
25 sale of vacation travel packages, Defendants have failed to  
26 disclose, in a clear and conspicuous manner before consumers  
27 pay for the vacation travel package, the total costs to  
28 purchase, receive, or use any goods or services that are the

1 subject of the sales offer, including, but not limited to,  
2 that the promised hotel accommodations may be available only  
3 for an additional charge. Defendants have thereby violated  
4 Section 310.3(a)(1)(i) of the Telemarketing Sales Rule, 16  
5 C.F.R. § 310.3(a)(1)(i).

6 **COUNT V**

7 34. In numerous instances, in connection with the  
8 advertising, marketing, promotion, offering for sale, or  
9 sale of vacation travel packages, Defendants have failed to  
10 disclose, in a clear and conspicuous manner before consumers  
11 pay for the vacation travel package, that the seller has a  
12 policy of not making refunds or cancellations. Defendants  
13 have thereby violated Section 310.3(a)(1)(iii) of the  
14 Telemarketing Sales Rule, 16 C.F.R. § 310.(3)(a)(1)(iii).

15 **COUNT VI**

16 35. In numerous instances, in connection with the  
17 advertising, marketing, promotion, offering for sale, or  
18 sale of vacation travel packages, Defendants have  
19 misrepresented, directly or by implication, material aspects  
20 of the nature or terms of the seller's refund or  
21 cancellation policies, including, but not limited to,  
22 informing consumers that they have the right to cancel and  
23 later denying them that right. Defendants have thereby  
24 violated Section 310.3(a)(2)(iv) of the Telemarketing Sales  
25 Rule, 16 C.F.R. § 310.3(a)(2)(iv).

26 **COUNT VII**

27 36. In numerous instances, in connection with the  
28 advertising, marketing, promotion, offering for sale, or

1 sale of vacation travel packages, Defendants have  
2 misrepresented, directly or by implication, material aspects  
3 of a prize promotion including, but not limited to, that  
4 consumers have won or been specially selected to receive  
5 travel vacation packages when in fact consumers have not won  
6 or been specially selected to receive such packages.  
7 Defendants have thereby violated Section 310.3(a)(2)(v) of  
8 the Telemarketing Sales Rule, 16 C.F.R. § 310.3(a)(2)(v).

9 **CONSUMER INJURY**

10 37. Consumers throughout the United States have  
11 suffered, and continue to suffer, substantial monetary loss  
12 as a result of Defendants' unlawful acts and practices. In  
13 addition, Defendants have been unjustly enriched as a result  
14 of their unlawful acts and practices. Absent injunctive  
15 relief, Defendants are likely to continue to injure  
16 consumers, reap unjust enrichment, and harm the public.

17 **THIS COURT'S POWER TO GRANT RELIEF**

18 38. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b),  
19 authorizes this Court to issue a permanent injunction  
20 against Defendants' violations of the FTC Act and, in the  
21 exercise of its equitable jurisdiction, to order such  
22 ancillary relief as a preliminary injunction, consumer  
23 redress, rescission, restitution and disgorgement of profits  
24 resulting from Defendants' unlawful acts or practices, and  
25 other remedial measures.

26 39. Section 19 of the FTC Act, 15 U.S.C. § 57b, and  
27 Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b),  
28 authorize the Court to grant to the FTC such relief as the

1 Court finds necessary to redress injury to consumers or  
2 other persons resulting from Defendants' violations of the  
3 Telemarketing Sales Rule, including the rescission and  
4 reformation of contracts and the refund of money.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff Federal Trade Commission, pursuant  
7 to Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b)  
8 and 57b, Section 6(b) of the Telemarketing Act, 15 U.S.C.  
9 § 6105(b), and the Court's own equitable powers, request  
10 that the Court:

11 1. Award Plaintiff such preliminary injunctive and  
12 ancillary relief as may be necessary to avert the likelihood  
13 of consumer injury during the pendency of this action and to  
14 preserve the possibility of effective final relief,  
15 including but not limited to, temporary and preliminary  
16 injunctions;

17 2. Permanently enjoin Defendants from violating the FTC  
18 Act and the Telemarketing Sales Rule, as alleged herein;

19 3. Award such relief as the Court finds necessary to  
20 redress injury to consumers resulting from Defendants'  
21 violations of the FTC Act and the Telemarketing Sales Rule  
22 including, but not limited to, rescission or reformation of  
23 contracts, restitution, refund of monies paid, and  
24 disgorgement of ill-gotten monies; and

25 4. Award Plaintiff the costs of bringing this action,  
26  
27  
28

1 as well as such other additional relief as the Court may  
2 determine to be just and proper.

3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Respectfully Submitted,

JOHN D. GRAUBERT  
Acting General Counsel

---

Raymond E. McKown  
Barbara Chun  
Attorneys for Plaintiff  
Federal Trade Commission  
10877 Wilshire Blvd., Ste. 700  
Los Angeles, CA 90024  
(310) 824.4343  
(310) 824.4380 (fax)

1 CERTIFICATE OF SERVICE

2 My name is Raymond E. McKown. I am an attorney employed  
3 by the Federal Trade Commission, 10877 Wilshire Blvd., Ste.  
4 700, Los Angeles, California 90024. On

5 \_\_\_\_\_ I placed the document captioned "COMPLAINT  
6 FOR INJUNCTION AND OTHER EQUITABLE RELIEF," in the first  
7 class United States mail, postage prepaid, addressed to the  
8 following:

9 Kevin M. Clarke  
10 Ronnin Law Group  
11 5959 West Century Boulevard, Suite 510  
12 Los Angeles, CA 90045  
13 Attorney for Defendants

14 I declare under penalty of perjury that the foregoing  
15 is true and correct. Executed this \_\_\_\_ day of \_\_\_\_\_  
16 at Los Angeles, California.

17 \_\_\_\_\_  
18 Raymond E. McKown  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28