

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION

Case No. \_\_\_\_\_-CIV-\_\_\_\_\_

FEDERAL TRADE COMMISSION,

Plaintiff,

vs.

IRA SMOLEV,

BRUCE TURIANSKY,

RICHARD KAYLOR,

PREMIER CLUB SERVICES, L.L.C.,  
a Delaware corporation,

PREMIER MARKETING SERVICES OF AMERICA, L.L.C.,  
a Delaware corporation,

RESIDENTS RESOURCE NETWORK, L.L.C.,  
a Delaware corporation,

REVENUE SOLUTIONS, L.L.C.,  
a Delaware corporation,

SPANISH RIVER INVESTORS, L.L.C.,  
a Delaware corporation,

THE BACKEND COMPANY OF AMERICA, INC.,  
a Florida corporation,

THE SHOPPERS EDGE, L.L.C.,  
a Delaware corporation,

TRIAD MARKETING GROUP, INC,  
a Florida corporation, and

TRITELL OF NEVADA, L.L.C.,  
a Nevada corporation,

Defendants.

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### **COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF**

Plaintiff, the Federal Trade Commission (“Commission”), by its undersigned attorneys, 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, and the Telemarketing and Consumer “FTC Act”, and Saul



manager and/or direct or indirect shareholder of each of the corporate Defendants. 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 the corporate Defendants set forth in this Complaint. Defendant Ira Smolev transacts or has transacted business in this district.

6. Defendant Bruce Turiansky was the Executive Vice-President of Marketing for Defendants Triad Discount Buying Service, Inc., Member Services of America, L.L.C., and other affiliated companies, and the President of Defendant Inter\*Act Travel, Inc. 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 the corporate Defendants set forth in this Complaint. Defendant Bruce Turiansky transacts or has transacted business in this District.

7. Defendant Richard Kaylor was the President and Chief Operating Officer of Defendants Triad Discount Buying Service, Inc., Member Services of America, L.L.C. and other affiliated companies. 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 the corporate Defendants set forth in this Complaint. Defendant Richard Kaylor transacts or has transacted business in this District.

8. Defendant Triad Discount Buying Service, Inc., is a Florida corporation with its principal place of business at 350 Camino Gardens Blvd., Boca Raton, FL 33432. Triad Discount Buying Service, Inc., transacts or has transacted business in this district.

9. Defendant Member Service of America, L.L.C., d.b.a, Best Price USA, is a Nevada limited liability corporation, which also has its principal place of business at 350 Camino Gardens Blvd.,



16. Defendant FAR Services, L.L.C., is a Delaware limited liability corporation, which also has its principal place of business at 350 Camino Gardens Blvd., Boca Raton, FL 33432. FAR Services, L.L.C. transacts or has transacted business in this district.

17. Defendant Linden Investments, L.L.C. is a Delaware limited liability corporation, which also has its principal place of business at 350 Camino Gardens Blvd., Boca Raton, FL 33432. Linden Investments, L.L.C. transacts or has transacted business in this district.

18. Defendant Lynstrom Information Service, L.L.C., is a Delaware limited liability corporation, which also has its principal place of business at 350 Camino Gardens Blvd., Boca Raton, FL 33432. Lynstrom Information Service, L.L.C. transacts or has transacted business in this district.

19. Defendant Premier Club Services, L.L.C., is a Delaware limited liability corporation, which also has its principal place of business at 350 Camino Gardens Blvd., Boca Raton, FL 33432. Premier Club Services, L.L.C. transacts or has transacted business in this district.

20. Defendant Premier Marketing Services of America, L.L.C., is a Delaware limited liability corporation, which also has its principal place of business at 350 Camino Gardens Blvd., Boca Raton, FL 33432. Premier Marketing Services of America, L.L.C. transacts or has transacted business in this district.

21. Defendant Residents Resource Network, L.L.C., is a Delaware limited liability corporation, which also has its principal place of business at 350 Camino Gardens Blvd., Boca Raton, FL 33432. Residents Resource Network, L.L.C. transacts or has transacted business in this district.

22. Defendant Revenue Solutions, L.L.C., is a Delaware limited liability corporation, which also has its principal place of business at 350 Camino Gardens Blvd., Boca Raton, FL 33432. Revenue Solutions, L.L.C transacts or has transacted business in this district.

23. Defendant Spanish River Investors, L.L.C., is a Delaware limited liability corporation, which also has its principal place of business at 350 Camino Gardens Blvd., Boca Raton, FL 33432. Spanish River Investors, L.L.C. transacts or has transacted business in this district.

24. Defendant The Backend Company of America, Inc. is a Florida corporation with its principal place of business at 350 Camino Gardens Blvd., Boca Raton, FL 33432. The Backend Company of America, Inc. transacts or has transacted business in this district.

25. Defendant The Shoppers Edge, L.L.C., is a Delaware limited liability corporation, which also has its principal place of business at 350 Camino Gardens Blvd., Boca Raton, FL 33432. The Shoppers Edge, L.L.C. transacts or has transacted business in this district.

26. Defendant Triad Marketing Group, Inc. is a Florida corporation with its principal place of business at 350 Camino Gardens Blvd., Boca Raton, FL 33432. Triad Marketing Group, Inc. transacts or has transacted business in this district.

27. Defendant Tritell of Nevada, L.L.C., is a Nevada limited liability corporation, which also has its principal place of business at 350 Camino Gardens Blvd., Boca Raton, FL 33432. Tritell of Nevada, L.L.C. transacts or has transacted business in this district.

### **COMMERCE**

28. At all times relevant to this complaint, Defendants' course of trade is in or affecting commerce within the meaning of Section 4 of the FTC Act, 15 U.S.C. § 44.

## **DEFENDANTS' COURSE OF CONDUCT**

29. Since at least 1997, Defendants have been engaged in a common enterprise nationwide to advertise, market, promote, offer to sell, sell and distribute memberships in buying services and other services under various names, including Triad Discount Buying Service, Best Price USA, America's Advantage, Discounts USA, FUNdamentals and



others. To promote the memberships, Defendants have engaged in a telemarketing campaign directly or through contracts with third parties who telemarket their own products. Defendants have provided scripts and training on how the third party telemarketers should market the memberships.

30. The third party telemarketers have been engaged in telemarketing campaigns through inbound calls in response to catalogues, general media advertising (including infomercials), and direct mail solicitations (including postcards promoting sweepstakes or prize promotions) to sell goods or services, such as foods, dietary supplements, gadgets or magazine subscriptions. Defendants and their third party telemarketers have also sold the memberships through “outbound” telemarketing calls, *i.e.*, calls initiated by Defendants or the third party telemarketers.

31. The catalogues, advertising and direct mail solicitations used by the third party telemarketers to solicit inbound calls provided information about the telemarketers’ goods or services, but generally did not disclose that the consumers calling to order the telemarketers’ goods or services also would receive a sales pitch for additional goods or services.

32. Generally, when consumers called the telemarketers to order the goods or services advertised by the telemarketers, consumers were asked to provide billing information, such as a credit card or bank account number, to pay for the telemarketers’ goods or services. At the time that the telemarketers asked for the consumers’ billing information, the telemarketers did not disclose that the consumers’ billing information might be turned over to a third party or used to pay for other goods or services.

33. After obtaining the billing information to process the initial sales transaction, the third party telemarketers then “upsold” Defendants’ memberships. “Upselling” is a telemarketing technique where

one seller sells its products or services through inbound or outbound telemarketing calls, and then solicits a second seller's goods or services after the consumer has already provided a credit card number to purchase the product or service initially offered by the telemarketer.

34. The third party telemarketers often introduced Defendants' memberships as a "thank you" for the initial sales transaction. The third party telemarketers then read the sales scripts provided by the Defendants. The sales scripts represented that "we" would send the consumer a free, no obligation 30-day trial membership in a buying service providing discount prices. The sales script then stated that if the consumer chose to continue as a member, the service would cost a specified amount per month, "billed annually, in advance." In numerous instances, the telemarketers stated that "I'm going to rush you your free Trial Membership kit" and that "if you don't save at least \$1000 this year, we'll give you a full refund."

35. The Defendants' scripts read by the third party telemarketers did not disclose, in a manner consumers were likely to notice and understand, that: (a) the buying service would charge the consumer's credit card the annual membership fee shortly after the 30-day membership ended, unless the consumer called the buying service within 30 days to cancel the membership; and (b) the buying service would charge the consumer's credit card the annual membership fee every year thereafter, unless the consumer called the buying service to cancel the membership. In many instances, Defendants completely failed to disclose the above facts regarding the terms of the buying service membership.

36. In numerous instances, Defendants, directly or through the third party telemarketer, simply announced that the consumer would receive a 30-day trial membership and a membership kit in the mail, and did not request the consumer's authorization either to send the membership kit or to charge the

consumer's credit card for the membership. Neither a consumer's willingness to receive a membership kit nor the consumer's failure to object when Defendants, directly or through the third party telemarketer, announced that the consumer would receive a membership kit, constituted authorization to charge the consumer's credit card.

37. If consumers agreed to accept a trial membership, and in numerous instances, even if consumers did not agree, the third party telemarketers provided the consumers' names and credit card numbers or other billing information to Defendants for the purpose of enrolling these consumers for trial memberships.

38. Shortly after receiving the consumer's name and billing information, Defendants mailed, by third-class bulk mail, a membership kit to the consumer. The kit disclosed that the consumer had to call to cancel the membership to avoid a credit card charge, and the telephone number that the consumer had to call to cancel the membership. Many consumers, however, did not open these kits because the kits appeared to be unsolicited promotional or sales materials.

39. Within about 45 days after receiving the consumer's name and billing information, Defendants charged each such consumer's credit card, generally using Defendants' merchant account, or debited each such consumer's bank account and also charged the consumer's credit card for "renewal" of the membership in each subsequent year.

40. After obtaining consumers' credit card numbers, directly or from their third party telemarketers, for the purpose of enrolling consumers in a membership service, Defendants routinely retained the consumers' credit card numbers. This fact was not disclosed to consumers by Defendants or the third party telemarketers. Subsequently, in making outbound calls to market additional membership

services to many of these same consumers, Defendants, with the consumers' credit card numbers already in their possession, merely asked the consumer to verify the last four digits and the expiration date of the consumer's credit card. With the updated expiration date, Defendants were able to charge the consumers' credit cards for the additional membership services.

41. In numerous calls by Defendants to consumers, in the course of soliciting consumers to accept membership services, Defendants asked consumers for personal identifying information, such as mother's maiden name and date of birth, ostensibly for the consumer to use as a password in case consumers wanted to contact Defendants about the buying service. Defendants, however, rarely, if ever, asked consumers for their personal identifying information when consumers called with questions.

42. Defendants received a large number of complaints from consumers who stated that they were signed up for 30-day memberships without their authorization or complained that they did not understand that they had to call and cancel the membership to avoid charges to their credit cards. Despite this, Defendants continued to charge consumers' credit cards without taking adequate steps to ensure that its third party telemarketers obtained authorization from consumers for such charges and disclosed the cancellation terms. Furthermore, numerous consumers complained to Defendants that they did not know

43. During the course of Defendants' marketing and sale of memberships in buying services and other services, directly and through third party telemarketers, numerous consumers who were signed up by Defendants did not agree to accept 30-day introductory memberships and did not recall receiving necessary information about cancellation and automatic renewals. In some instances, consumers did not

## COUNT II

48. Since at least 1997, in numerous instances, in connection with the advertising, promotion, marketing, offering for sale, sale, or distribution of buying service memberships and other memberships, Defendants, directly or through their third party telemarketers, have represented, expressly or by implication, that consumers who agree to the offer of the membership will receive a “no obligation” or “risk-free” trial membership.

49. Defendants have failed to disclose or to disclose adequately to consumers:

a. That a consumer who fails to contact Defendants within 30 days and cancel the trial membership is automatically enrolled as a member and the consumer’s credit card is charged an annual fee; and

b. That a member’s credit card is charged a renewal fee each subsequent year unless the member cancels the membership.

These facts would be material to consumers in their decision to accept a trial membership offer or purchase a membership.

50. In light of the representations set forth in paragraph 48, the failure to disclose or to disclose adequately the material information set forth in paragraph 49 is a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

## COUNT III

51. In numerous instances, in connection with the advertising promotion, marketing, offering for sale, sale, or distribution of buying service memberships and other memberships, Defendants, directly or through their third party telemarketers, have represented, directly or by implication, through, *inter alia*,

mailings, credit card charges or checking account debits, that consumers agreed to accept the trial

57. Since at least 1997, in numerous instances, in connection with the advertising, promotion,



62. The TSR prohibits sellers and telemarketers “[b]efore a customer pays for goods or services offered ... from failing to disclose, in a clear and conspicuous manner ... [a]ll material restrictions, limitations, or conditions to purchase, receive, or use the goods or services that are the subject of the sales offer.” 16 C.F.R. § 310.3(a)(1)(ii).

63. The TSR requires telemarketers in outbound telephone calls to disclose promptly and in a clear and conspicuous manner to the person receiving the call, the following:

- a. The identity of the seller;
- b. That the purpose of the call is to sell goods and services; and
- c. The nature of the goods or services.

16 C.F.R. §§ 310.4(d)(1), (2) and (3).

64. The TSR’s Statement (The TSR’s Statemen )(6Tc 0.3Statatatars Std39 kcuousds andll goo paymultipls t

**VIOLATIONS OF THE TELEMARKETING SALES RULE**

c. The nature of the goods or services.

70. Therefore, Defendants' acts and practices as set forth in paragraph 69 violate Sections 310.4(d)(1), (2) and (3) of the TSR, 16 C.F.R. §§ 310.4(d)(1), (2), and (3).

### **COUNT VIII**

71. Since at least 1997, in numerous instances, in connection with the telemarketing of buying service memberships and other memberships, Defendants' third party telemarketers:

a. Have failed to disclose, in a clear and conspicuous manner, before consumers pay for the memberships, all material restrictions, limitations, or conditions to purchase, receive, or use the goods or services that are the subject of the sales offers, thereby violating Section 310.3(a)(1)(ii) of the TSR, 16 C.F.R § 310.3 (a)(1)(ii); and

b. In "outbound telephone calls," as that term is defined in the TSR, 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 the identity of the seller, and that the purpose of the call is to sell goods or services, thereby violating Section 310.4(d)(1) and (2) of the TSR, 16 C.F.R. §§ 310.4(d)(1) and (2).

72. Knowing, or consciously avoiding knowing, that the contracted telemarketers have been engaged in acts or practices that violate the TSR as set forth in paragraph 71 above, Defendants have provided various services to their third party telemarketers, including, but not limited to, creating and providing scripts to be used in the telemarketing of memberships, providing training to the telemarketers on how to promote the memberships, processing charges to consumers for the memberships using Defendants' merchant account, and providing customer service. Defendants have thereby provided

substantial assistance or support to their third party telemarketers, thereby violating Section 310.3(b) of the TSR, 16 C.F.R. § 310.3(b).

**CONSUMER INJURY**

73. Consumers throughout the United States have suffered, and continue to suffer, substantial

2. Award such equitable relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act and the TSR, including but not limited to, rescission of contracts and restitution, other forms of redress, and the disgorgement of ill-gotten monies; and

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

Dated: \_\_\_\_\_, 2001

Respectfully submitted,

WILLIAM E. KOVACIC  
General Counsel

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