

1
2
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

1 Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, and the Telemarketing and
2 Consumer Fraud and Abuse Prevention Act ("Telemarketing Act"), 15 U.S.C. § 6101 *et seq.*, to
3 obtain permanent injunctive relief, rescission of contracts, restitution, disgorgement, and other
4 equitable relief for defendants' deceptive acts or practices in violation of Section 5(a) of the FTC
5 Act, 15 U.S.C. § 45(a), and the FTC's Trade Regulation Rule entitled "Telemarketing Sales
6 Rule," 16 C.F.R. Part 310. The Commission also seeks disgorgement, plus prejudgment interest,
7 from each relief defendant of all funds derived, directly or indirectly, from the defendants'
8 deceptive conduct.

9 **JURISDICTION AND VENUE**

10 2.
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15

1 defendants have offered to sell purported foreign lottery tickets or chances, claiming that

2
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

VIOLATIONS OF SECTION 5 OF THE FTC ACT

1
2 16. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits deceptive acts and
3 practices in or affecting commerce.
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

1 24. In numerous instances, in connection with telemarketing foreign lottery tickets or
2 foreign lottery opportunities, defendants have failed to disclose that the sale and trafficking in
3 foreign lotteries is a crime in the United States.

4 25. Defendants' failure to disclose this material fact is deceptive and violates Section
5 5(a) of the FTC Act, 15 U.S.C. § 45(a).

6 **VIOLATIONS OF THE TELEMARKETING SALES RULE**

7 In the Telemarketing Act, 15 U.S.C. § 6101, *et seq.*, Congress directed the FTC to
8 prescribe rules prohibiting deceptive telemarketing acts or practices. On August 16, 1995, the
9 Commission promulgated the TSR, 16 C.F.R. Part 310. The TSR became effective on December
10 31, 1995.

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

13 27. The TSR requires sellers and telemarketers to disclose all material restrictions,
14 limitations, or conditions to purchase, receive, or use the goods or services that are the subject of
15 the sales offer. 16 C.F.R. § 310.3(a)(1)(ii).

16 28. The TSR prohibits sellers and telemarketers from "making a false or misleading
17 statement to induce any person to pay for goods or services." 16 C.F.R. § 310.3(a)(4).

18 29. Pursuant to Section 3(c) of the Telemarketing Act, 15 U.S.C. § 6102 (c), and
19 Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), violations of the TSR constitute
20 deceptive acts or practices in or affecting commerce, in violation of Section 5(a) of the FTC Act,
21 15 U.S.C. § 45(a).

22 **COUNT FOUR**

23 30. In numerous instances, in connection with telemarketing foreign lottery tickets or
24 foreign lottery opportunities, defendants have made false or misleading statements to induce the
25 purchase of lottery tickets or payment of money, including but not limited to the following:

- 26 a. the consumer is likely to win a large cash award if the consumer purchases
27 lottery tickets or otherwise makes a payment to defendants; and
28

1 b. the consumer has won and will receive a large cash award if the consumer
2 pays defendants a fee or fees.

3 31. Therefore, defendants have violated Section 310.3(a)(4) of the Rule, 16 C.F.R.
4 § 310.3(a)(4).

5 **COUNT FIVE**

6 32. In numerous instances, in connection with telemarketing foreign lottery tickets or
7 foreign lottery opportunities, defendants have failed to disclose that the sale and trafficking in
8 foreign lotteries is a crime in the United States. Defendants have thereby violated Section
9 310.3(a)(1)(ii) of the Rule, 16 C.F.R. § 310.3(a)(1)(ii).

10 **COUNT SIX**

11 **RELIEF DEFENDANTS**

12 33.
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 relief by this Court, the defendants are likely to continue to injure consumers, reap unjust
2 enrichment, and harm the public interest.

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

4 38. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant
5 injunctive and other ancillary relief, including consumer redress, disgorgement, and restitution to
6 prevent and remedy any violations of any provision of law enforced by the Commission.

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

11 40. This Court, in the exercise of its equitable jurisdiction, may award other ancillary
12 relief to remedy injury caused by the defendants' law violations.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, plaintiff the Federal Trade Commission, pursuant to Sections 13(b) and
15 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, Section 6(b) of the Telemarketing Act, 15
16 U.S.C. § 6105(b), and the Court's own equitable powers, requests that the Court:

- 17 a. Award plaintiff such preliminary injunctive and ancillary relief as may be
18 necessary to avert the likelihood of consumer injury during the pendency of this
19 action and to preserve the possibility of effective final relief;
- 20 b. Permanently enjoin the defendants from violating the FTC Act and the
21 TSR, as alleged herein;
- 22 c. Award such relief as the Court finds necessary to redress injury to
23 consumers resulting from the defendants' violations of the Telemarketing Sales
24 Rule and the FTC Act, including but not limited to, rescission of contracts, the
25 refund of monies paid, and the disgorgement of ill-gotten monies and interest
26 thereon by defendants and relief defendants; and

1 d. Award plaintiff the costs of bringing this action and reasonable attorneys'
2 fees, as well as such other and additional relief as the Court may determine to be
3 just and proper.

4
5 Dated: _____, 2002

6 Respectfully Submitted,

7 WILLIAM E. KOVACIC
8 General Counsel

9 CHARLES A. HARWOOD
10 Regional Director

11 Mary T. Benfield, WSBA #18835
12 Thomas Rowan, WSBA #30789
13 Attorneys for Plaintiff
14 Federal Trade Commission