

David R. Spiegel, NY Bar No. 1592724
Peter Lamberton, DC Bar No. 436313
Michelle Chua, DC Bar No. 441990

Plaintiff Federal Trade Commission (“FTC” or “Commission”) for its complaint alleges:

5. The FTC 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 (“Telemarketing Act”), 15 U.S.C. §§ 6101 *et seq.*, and Section 522(a) of the Gramm-Leach-Bliley Act (“GLB Act”), 15 U.S.C. § 6822(a), to obtain preliminary and permanent injunctive relief, rescission of contracts, restitution, redress, disgorgement, and other equitable relief for Defendants’ deceptive and unfair acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, the FTC’s Trade Regulation Rule, entitled “Telemarketing Sales Rule,” 16 C.F.R. Part 310, and Section 521 of the GLB Act, 15 U.S.C. § 6821.

JURISDICTION AND VENUE

6. Subject matter jurisdiction is conferred upon this Court by 15 U.S.C. §§ 45(a), 53(b), 57b, 6102(c), and 6105(b), and 28 U.S.C. §§ 1331, 1337(a), and 1345.
7. Venue in this District is proper under 15 U.S.C. §§ 53(b) and 28 U.S.C. § 1391(b), (c), and (d).

PLAINTIFF

8. Plaintiff, the 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 enforcing Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. The Commission also enforces the Telemarketing Sales Rule ("TSR" or "the Rule"), 16 C.F.R. Part 310, which prohibits deceptive or abusive telemarketing practices. The FTC is also charged, under Section 522(a) of the GLB Act, 15 U.S.C. § 6822(a), with enforcing Section 521(a) of the GLB Act, 15 U.S.C. § 6821(a), which prohibits, among other things, any person from using false pretenses to obtain customer information of a financial institution from the customer. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), authorizes the FTC to initiate federal district court proceedings, in its own name by its designated attorneys, to enjoin violations of any provision of law enforced by the FTC, and to secure such equitable relief as may be appropriate in each case, including redress, restitution and disgorgement. 15 U.S.C. §§ 53(b), 57b, 6102(c), and 6105(b).

DEFENDANTS

5. Since at least 1998, Defendants Harvey Sloniker and Tye Sloniker have fraudulently telemarketed bogus products or services through a constantly changing group of interrelated companies. These companies, all operating out of the same Arizona offices and under the control of Harvey Sloniker and Tye Sloniker, include but are not limited to Defendants Corporate Marketing Solutions, Inc. ("CMSolutions"), Corporate Industries, Inc. ("CI"), ATM Machine Wrap, Inc. ("ATM Machine"), Direct Wireless +, Inc. ("Direct Wireless"), Bankcard Recovery Services, Inc.

(“BRS”), National Consolidation Foundation, Inc. (“NCF”), and Sierra Management Properties, Inc. (“Sierra”) – all of which are hereinafter collectively referred to as the “Sloniker Common Enterprise.”

6. Defendant Harvey Leroy Sloniker, Jr. is an officer of Defendants CMSolutions, ATM Machine, Direct Wireless, CI, BRS, NCF, and Sierra. Harvey Sloniker is a controlling person of the Sloniker Common Enterprise. At all times material to this complaint, acting alone or in concert with others, he has formulated, directed, controlled, or participated in the illegal acts and practices set forth in the complaint. Harvey Sloniker is a resident of Arizona, and transacts or has transacted business in this district and throughout the United States.
7. Defendant Tye R. Sloniker is the Sales Manager of defendant CI. He is also a controlling person of the Sloniker Common Enterprise. At all times material to this complaint, acting alone or in concert with others, Tye Sloniker has formulated, directed, controlled, or participated in the illegal acts and practices set forth in the complaint. Tye Sloniker is a resident of Arizona, and transacts or has transacted business in this district and throughout the United States.
8. Defendant Corporate Marketing Solutions, Inc. (“CMSolutions”) is an Arizona corporation with its principal place of business located at 1133 South Dobson, Mesa, Arizona. CMSolutions is part of the Sloniker Common Enterprise. CMSolutions transacts or has transacted business in this district and throughout the United States.

9. Defendant Corporate Industries, Inc. (“CI”), sometimes also doing business as “Corporate Marketing Services,” is an Arizona corporation with its principal place of business located at 1133 South Dobson, Mesa, Arizona. CI also uses or has used offices located at 1318 South Country Club Drive, Mesa, Arizona, 825 South Rural Road, Tempe, Arizona, and 4236 North Central, Phoenix, Arizona. CI is part of the Sloniker Common Enterprise. CI transacts or has transacted business in this district and throughout the United States.
10. Defendant ATM Machine Wrap, Inc. (“ATM Machine”) is an Arizona corporation with its principal place of business located at 1133 South Dobson, Mesa, Arizona. ATM Machine is part of the Sloniker Common Enterprise. ATM Machine transacts or has transacted business in this district and throughout the United States.
11. Defendant Direct Wireless +, Inc. (“Direct Wireless”) is an Arizona corporation with its principal place of business located at 1133 South Dobson, Mesa, Arizona. Direct Wireless is part of the Sloniker Common Enterprise. Direct Wireless transacts or has transacted business in this district and throughout the United States.
12. Defendant Bankcard Recovery Services, Inc. (“BRS”) is an Arizona corporation with its principal place of business located at 1133 South Dobson, Mesa, Arizona. Bankcard is part of the Sloniker Common Enterprise. BRS transacts or has transacted business in this district and throughout the United States.
13. Defendant National Consolidation Foundation, Inc. (“NCF”) is an Arizona corporation with its principal place of business located at 1133 South Dobson,

Mesa, Arizona. NCF is part of the Sloniker Common Enterprise. NCF transacts or has transacted business in this district and throughout the United States.

14. Defendant Sierra Management Properties (“Sierra”) is an Arizona corporation with its principal place of business located at 1133 South Dobson, Mesa, Arizona. Sierra is part of the Sloniker Common Enterprise. Sierra transacts or has transacted business in this district and throughout the United States.
15. Defendants Harvey Sloniker, Tye Sloniker, and one or more corporate defendants have at times done business as Corporate Marketing Services (“CMS”). Business has been conducted under that name principally at 1133 South Dobson, Mesa, Arizona. The business Defendants have conducted under the name CMS has been transacted in this district and throughout the United States.

The Defendants Constitute a Common Enterprise

16. The Defendants have conducted their activities through interrelated companies consisting of CMSolutions, CI, ATM Machine, Direct Wireless, BRS, NCF, and Sierra. The corporate defendants have operated as a common enterprise (“Sloniker Common Enterprise”). They have shared officers, employees, office locations, have commingled funds, are commonly controlled, and have engaged in a common scheme.

COMMERCE

17. At all times material to this complaint, Defendants have maintained a substantial course of trade in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS' BUSINESS PRACTICES

18. Since at least 1998, Defendants Harvey Sloniker and Tye Sloniker (the “Slonikers”) have fraudulently telemarketed bogus products or services through CMSolutions, CI, ATM Machine, Direct Wireless, BRS, NCF, Sierra, and other entities within the Sloniker Common Enterprise. At times, the Sloniker Common Enterprise has deceptively marketed products or services in the name of corporate entities directly owned and controlled by the Slonikers, such as BRS. More commonly, the Sloniker Common Enterprise has marketed nonexistent products or services on behalf of third party companies (Defendants’ “client companies”) with whom Defendants have agreed to provide telemarketing services in exchange for sales commissions.
19. To date, the Sloniker Common Enterprise has marketed non-existent advance-fee credit cards, using similar or identical sales scripts, on behalf of at least seven client companies, five of which have been subject to FTC law enforcement actions in recent years. In 2001, the Sloniker Common Enterprise also deceptively marketed phantom identity theft and telemarketing fraud protection services on behalf of one such client company.

20. Regardless of the client company or type of product or service offered, Defendants' telemarketers make numerous false representations to induce consumers to pay large fees for nonexistent products or services. They also make misrepresentations to trick consumers into disclosing the consumers' personal financial information. Further, upon obtaining the consumers' personal financial information, Defendants charge consumers' credit cards or electronically debit fees from consumers' bank accounts, without having obtained the consumers' authorization to do so.
21. Defendants operate largely "underground." They attempt to keep their identity and current whereabouts a secret. They identify themselves with pseudonyms, rather than real names. They provide the addresses and telephone numbers of the client company, many of which are nothing more than maildrops or telephone numbers no longer in operation. In reality, Defendants operate out of several boilerrooms located in and around Phoenix, Arizona.
22. In numerous instances, neither Defendants, nor Defendants' client companies, have provided consumers who pay the advance fee the products or services promised.
23. Defendants' fraudulent telemarketing operations have resulted in credit card and bank account charges, many of which were unauthorized, to tens of thousands of American consumers.

Advance-Fee Credit Cards

24. Defendants have marketed non-existent advance-fee credit cards on behalf of numerous client companies, including Liberty Direct, Inc., Membership Services,

R & R Consulting, Inc., North American Savings Center, First Freedom Financial, Capital Choice, and American Financial Services. In this scam, Defendants telephone consumers and falsely promise to provide credit cards to consumers in exchange for an advance fee, ranging from \$209 to \$395. After paying the fee, in numerous cases, consumers have not received the promised credit cards.

25. Defendants typically begin their telephone pitch by representing to consumers that they are affiliated with, or calling on behalf of, a bank or financial institution. Defendants then represent that the consumer has been pre-approved for a major credit card, such as a VISA or Mastercard credit card. Defendants represent that, in exchange for their advance fees, consumers are “guaranteed” or highly likely to receive the credit card.
26. In some instances, Defendants represent that, in addition to receiving the credit card, consumers will receive as a bonus additional discounted products, or membership enrollment in a discount buyer’s club that offers significant discounts on a variety of services and products. Defendants represent that the value of membership in the buyer’s club exceeds the cost of the advance fee charged for the credit card.
27. In pitching their advance-fee credit cards, Defendants employ numerous pretexts to induce consumers to divulge their personal financial information. Defendants falsely claim, among other things, (a) that they already possess consumers’ credit card numbers, and are merely seeking verification of those numbers, or (b) that the

credit card-issuing institution requires consumers to provide proof that the consumers have an existing valid bank account in order to be eligible for the promised credit card. Defendants then request that the consumers read their credit

39. In numerous instances, in connection with the marketing of advance-fee credit cards, Defendants, directly or indirectly, have represented, expressly or by implication:
- A. that Defendants are affiliated with, or calling from or on behalf of, a bank or other financial institution;
 - B. that after consumers pay Defendants a fee, consumers are highly likely or are guaranteed to receive a major credit card, such as a VISA or Mastercard credit card; and/or
 - C. that after consumers pay Defendants a fee, consumers will receive, as a bonus, additional discounted products or services, or membership enrollment in a discount buyer's club that offers significant discounts on a variety of products and services.
40. In truth and in fact, in numerous instances,
- A. Defendants are not affiliated with, or calling from or on behalf of, a bank or other financial institution;
 - B. after paying Defendants a fee, consumers do not receive a major credit card, such as a VISA or Mastercard credit card; and
 - C. after paying Defendants a fee, consumers do not receive additional discounted products or services, or membership enrollment in a discount buyer's club that offers significant discounts on a variety of products and services.

Therefore, the representations set forth in Paragraph 39 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

Identity Theft and Telemarketing Fraud Protection Services

41. In numerous instances, in connection with the marketing of identify theft and telemarketing fraud protection services, Defendants, directly or indirectly, have represented, expressly or by implication:
- A. that Defendants are affiliated with, or calling from or on behalf of, VISA, Mastercard, a bank or other financial institution, or a consumer protection agency;
 - B. that after consumers pay Defendants a fee, Defendants will remove consumers' names from all telemarketing lists, and thereby protect consumers from receiving future telemarketing calls; and/or
 - C. that after consumers pay Defendants a fee, Defendants will remove consumers' credit card and personal information from the Internet, and thereby protect consumers from future identity theft or credit card fraud.
42. In truth and in fact, in numerous instances,

- A. Defendants are not affiliated with, or calling from or on behalf of, VISA, Mastercard, a bank or other financial institution, or a consumer protection agency.
- B. after consumers pay Defendants a fee, Defendants do not remove consumers' names from all telemarketing lists, and do not thereby protect consumers from receiving future telemarketing calls; and
- C. after consumers pay Defendants a fee, Defendants do not remove consumers' credit card and personal information from the Internet, and do not thereby protect consumers from future identity theft or credit card fraud.

Therefore, Defendants' representations, as set forth in Paragraph 41, 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 III

Pretexting

43. In numerous instances, in connection with the marketing of various products or services, Defendants, directly or indirectly, have employed pretexts to induce consumers to divulge their personal financial information. These pretexts include, but are not limited to, representing, expressly or by implication:

- A. that Defendants are affiliated with, or calling from or on behalf of, a bank, financial institution, or consumer protection agency;

- B. that Defendants already possess, and are merely verifying, consumers' credit card numbers; and/or
- C. that Defendants require consumers to provide evidence of a valid personal bank account to establish the consumers' eligibility for a credit card.

44. In truth and in fact, in numerous instances,

- A. Defendants are not affiliated with, or calling from or on behalf of, a bank, financial institution, or consumer protection agency;
- B. Defendants do not already possess, and are not merely verifying, consumers' credit card numbers; and
- C. Defendants do not require consumers to provide evidence of a valid personal bank account to establish the consumers' eligibility for a credit card.

Therefore, Defendants' representations, as set forth in Paragraph 43, 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 IV

Unauthorized Billing

45. In numerous instances, in connection with the marketing of various products or services, Defendants have caused consumers' credit card accounts to be charged, or

have caused consumers' bank accounts to be electronically debited, without having previously obtained the consumers' authorizations for such charges or debits.

46. Defendants' practice set forth in Paragraph 45 causes or is likely to cause substantial injury to consumers that is not reasonably avoidable by consumers and is not outweighed by countervailing benefits to consumers or competition.
47. Defendants' practice as alleged in Paragraph 45 is an unfair practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

GRAMM-LEACH-BLILEY ACT

48. Section 521 of the GLB Act, 15 U.S.C. § 6821, became effective on November 12, 1999, and has since remained in full force and effect. Section 521(a) of the Gramm-Leach-Bliley Act, 15 U.S.C. § 6821(a), prohibits:
- any person from obtaining or attempting to obtain, or causing to be disclosed or attempting to cause to be disclosed to any person, customer information of a financial institution relating to another person . . . (2) by making a false, fictitious, or fraudulent statement or representation to a customer of a financial institution . . .
49. Section 522(a) of the GLB Act, 15 U.S.C. § 6822(a), empowers the Commission to enforce Section 521 of the GLB Act, 15 U.S.C. § 6821, “in the same manner and with the same power and authority as the Commission has under the Fair Debt Collection Practices Act [“FDCP Act”] to enforce compliance with such Act.” Section 814 of the FDCP Act, 15 U.S.C. § 1692l, provides that “[a]ll the functions and powers of the Commission under the [FTC Act] are available to the Commission to enforce compliance with” the FDCP Act. Section 814 of the FDCP Act also provides that a violation of the FDCP Act “shall be deemed to be an unfair or deceptive act or practice in violation of” the FTC Act. Therefore, violations of Section 521 of the GLB Act constitute unfair or deceptive acts or practices in violation of Section 5(a) of the FTC Act.

COUNT V

Gramm-Leach-Bliley Act “Pretexting” Violations

50. Paragraphs 43-44 are incorporated herein by reference.
51. By

57. The Telemarketing Sales Rule also prohibits telemarketers and sellers from, among other things, requesting or receiving payment of any fee or consideration in advance of obtaining or arranging a loan or other extension of credit when the seller or telemarketer has guaranteed or represented a high likelihood of success in obtaining or arranging a loan or other extension of credit. 16 C.F.R. § 310.4(a)(4).
58. 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 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).
59. Defendants are “sellers” or “telemarketers” engaged in “telemarketing,” as those terms are defined in the Rule, 16 C.F.R. §§ 310.2(r), (t), and (u).

COUNT VI

Defendants’ Telemarketing Sales Rule Violations

60. In numerous instances, in connection with the telemarketing of advance-fee credit cards, Defendants have requested or received payment of a fee or consideration in advance of consumers' obtaining a credit card when Defendants have guaranteed or represented a high likelihood of success in obtaining a credit card for such consumers.
61. Defendants have thereby violated Section 310.4(a)(4) of the Telemarketing Sales Rule, 16 C.F.R. § 310.4(a)(4).

COUNT VII

62. In numerous instances, in connection with the telemarketing of advance-fee credit cards or identity theft and telemarketing fraud protection services to consumers, Defendants have represented, directly or by implication, that:

- A. after paying the Defendants a fee, consumers are guaranteed or are highly likely to receive a credit card;
- B. after consumers pay the Defendants a fee, Defendants will (1) remove consumers' credit card and personal information from the Internet and thereby protect consumers from future identity theft or credit card fraud, and (2) remove consumers' names from all telemarketing lists and thereby protect consumers from receiving future telemarketing calls.

63. In truth and in fact:

- A. after paying the Defendants a fee, consumers will not or are highly unlikely to receive a credit card;
- B. after consumers pay Defendants a fee, Defendants will not remove consumers' credit card and personal information from the Internet, and will not thereby protect consumers from future identity theft or credit card fraud, and/or will not remove consumers' names from all telemarketing lists, and will not thereby protect consumers from receiving future telemarketing calls.

64. Defendants'

PRAYER FOR RELIEF

69. WHEREFORE, plaintiff, the Federal Trade Commission, pursuant to Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, Section 522(a) of the GLB Act, 15 U.S.C. § 6822(a), Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b), and the Court's own equitable powers, requests that the Court:
- A. Award plaintiff such preliminary injunctive and ancillary 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;
 - B. Permanently enjoin Defendants from violating the FTC Act, the GLB Act, and the Telemarketing Sales Rule, as alleged herein;
 - C. Award such relief as the Court finds necessary to redress injury to consumers

Award

David R. Spiegel, NY Bar No. 1592724
Peter Lamberton
Michelle Chua
Attorneys for Plaintiff
Federal Trade Commission
600 Pennsylvania Ave., N.W.
Washington, D.C. 20580
Telephone: (202) 326-3281
Telephone: (202) 326-3248
Facsimile: (202) 326-3395