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U.S. DISTRICT COURT
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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA

Case No. 5:04cv49 ~~02~~

FEDERAL TRADE COMMISSION,)

Plaintiff,)

vs.)

TELEPHONE PROTECTION AGENCY, INC.,)
a North Carolina corporation;)

ROBERT THOMPSON, a/k/a)
GREG THOMPSON,)
individually and as an officer of TELEPHONE)
PROTECTION AGENCY, INC.:)

REBECCA PHILLIPS,)

Plaintiff, the Federal Trade Commission (“FTC”), for its Complaint alleges:

1. 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, and the Telemarketing and Consumer Fraud and Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C. §§ 6101-6108, to obtain permanent injunctive relief, rescission of contracts, redress, restitution, disgorgement, and other equitable relief for Defendants’ acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and violation of the FTC’s Telemarketing Sales Rule (“TSR”), 16 C.F.R. Part 310.

provided for and in accordance with Sections 524(a) and 727 of the Bankruptcy Code, 11 U.S.C. §§ 524(a) and 727. The Commission's action against Defendant Rebecca Phillips is not enjoined by 11 U.S.C. § 524(a) because the Commission is not seeking the entry of a monetary judgment against Defendant Rebecca Phillips for claims that arose prior to August 18, 2003.

THE PARTIES

6. Plaintiff, FTC, is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41 *et seq.* The FTC is charged, *inter alia*, with enforcement of 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 FTC also enforces the TSR, 16 C.F.R. Part 310, which prohibits deceptive and abusive telemarketing acts or practices. The FTC is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act and the TSR,

forth in this Complaint. Defendant Thompson resides, transacts, or has transacted business in the Western District of North Carolina.

9. Defendant Rebecca Phillips is the President of Telephone Protection Agency. At all times material to this Complaint, acting alone or in concert with others, she has formulated, directed, controlled, or participated in the acts or practices set forth in this Complaint.

Defendant Phillips resides, transacts, or has transacted business in the Western District of North Carolina.

13. In numerous instances, consumers did not agree to purchase the services. Defendants, nevertheless, proceeded to charge consumers' credit cards or withdraw money from consumers' bank accounts.

14. At other times, Defendants did not even contact consumers prior to taking their money. Defendants already had in their possession consumers' credit card numbers, or bank account or debit card numbers, which enabled them to bill consumers without ever contacting them.

15. Defendants billed consumers between \$29.95 and \$99.95. Defendants billed over 12,000 consumers.

16. Some consumers did not realize that they had been billed by Defendants until charges showed up on their credit card statements or their bank statements, if they noticed the billing at all.

17. Some consumers received a package of written materials from Defendants, either after the initial telephone call or without any prior contact from Defendants. The package of materials included a description of the methods Defendants purported to use to stop calls and protect private information.

18. For example, Defendants stated in their package of written materials that they would register consumers with the "FCC's National **NO CALL** List." In fact, however, the FCC did not have a National **NO CALL** List at the time Defendants made the statement. Therefore, Defendants could not and did not provide this service.

19. Defendants further stated in their package of written materials that they would

consumer's demand for privacy. In numerous instances, however, Defendants did not provide this service.

20. Moreover, Defendants made claims in their written materials and on their website, www.telephoneprotection.com, that they would protect consumer's personal information, including their account information. Defendants even issued the following warning to consumers in their brochure: "Don't Be a Victim..Most credit and debit card fraud begins when crooks gain access to your personal billing information."

21. Defendants stated in their written materials that they would notify every known telephone and mailing list company not to sell or lease a consumer's information to anyone or any company, under any circumstances. In numerous instances, however, Defendants did not provide this service.

22. Furthermore, on their website, Defendants stated: "Take a second to think how nice it would be to sit at the dinner table uninterrupted or to know that there is someone working at all times to keep your personal information just as it should be: personal. Currently you are more than likely on major list brokers' marketing lists. Your personal information such as your name, phone number, address, and yes, even at times credit and debit banking account information are on these lists as well, and have a price tag attached to it. . . . Our mission is to stop your unwanted telemarketing, mail, email and even fax solicitations as well as the selling of your personal information among those marketing companies."

23. In reality, however, Defendants did not protect consumers' personal information. Defendants instead misused the very consumer account information they claimed to protect by billing consumers without their authorization.

24. At the very back of some of Defendants' packages of written materials was a page that thanked consumers for their order and stated that they would be automatically billed a certain amount for their first year of service, which was often \$99.95. In numerous instances, however, consumers who received Defendants' package of materials had never ordered or agreed to purchase the services in the first place, so there was no order to be confirmed.

25. Moreover, Defendants failed to keep all legally required records for a period of 24 months from the date the records were produced as required by the TSR. Defendants do not have records for the period of November 2001 through May 2002 showing the name and last known address of each consumer or customer, the goods or services purchased, the date such goods or services were shipped or provided, and the amount paid by the consumer or customer for the goods or services. Defendants also do not have records from June 2002 to October 2002 showing the goods or services purchased by consumers or customers, and the date goods or services were actually shipped or provided to consumers or customers.

SECTION 5 OF THE FTC ACT

26. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits unfair or deceptive acts or practices in or affecting commerce. An act or practice is unfair if it causes or is likely to cause

COUNT I - Section 5 - Unauthorized Billing

27. Paragraphs 1 through 26 are incorporated by reference.

28. In numerous instances, in connection with the marketing of “do not call” or personal information protection services, Defendants caused charges to be billed to consumers’ credit cards, or caused consumers’ bank accounts to be debited without the consumers’ authorization.

29. Defendants’ practice caused or is likely to have caused substantial injury to consumers that was not reasonably avoidable by the consumers and was not outweighed by countervailing benefits to consumers or to competition.

30. Therefore, Defendants’ practice, as alleged in Paragraph 28, is unfair and violates Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT II - Section 5 - False Representations

31. Paragraphs 1 through 26 are incorporated by reference.

32. In numerous instances, in connection with the marketing of “do not call” or personal information protection services, Defendants represented, directly or indirectly, expressly or by implication, that:

- a. Defendants would register consumers with the FCC’s National **NO CALL** List;
- b. Defendants would provide a monthly list to telemarketing and direct and electronic mail companies nationwide of consumers’ demands for privacy; and

c. Defendants would notify every known telephone and mailing list company not to sell or lease consumers' information to any person or company under any circumstances.

33. In truth and in fact,

a. Defendants could not and did not register consumers with the FCC's National **NO CALL** List;

b. Defendants did not provi

36. Defendants are “Seller[s]” or “Telemarketer[s]” engaged in “Telemarketing”, as

40. In truth and in fact,
- a. Defendants could not and did not register consumers with the FCC's National **NO CALL** List;

CONSUMER INJURY

45. Consumers in many areas of the United States have suffered, and continue to suffer, substantial monetary loss as a result of Defendants' unlawful acts and practices. In addition, Defendants have been unjustly enriched as a result of their unlawful practices. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public.

THIS COURT'S POWER TO GRANT RELIEF

2. Award such relief as the Court finds necessary to redress injury to consumers

resulting from Defendants' violations of the FTC Act and 16 C.F.R. § 312.2

rescission or reformation of contracts, restitution, refund of money paid