



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

9 **JURISDICTION AND VENUE**

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

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

15 **PLAINTIFF**

16 4. Plaintiff, Federal Trade Commission, is an independent  
17 agency of the United States government created by statute. 15  
18 U.S.C. §§ 41 *et seq.* The Commission enforces Section 5(a) of the  
19 FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive  
20 acts or practices in or affecting commerce. The Commission also  
21 enforces the TSR, 16 C.F.R. Part 310, which prohibits deceptive or  
22 abusive telemarketing acts or practices. The Commission may  
23 initiate federal district court proceedings, through its  
24 attorneys, to enjoin violations of the FTC Act and the TSR, and to  
25 secure such other equitable relief, including rescission of  
26 contracts and restitution, and disgorgement of ill-gotten gains,  
27 as may be appropriate in each case. 15 U.S.C. §§ 53(b), 57b, and  
28 6105(b).

**DEFENDANTS**

5. Defendant Del Sol LLC ("Del Sol"), also doing business as Del Sol Educational, is a California limited liability corporation with a principal place of business of 1578-G W. San Bernardino Road, Covina, California 91722. Del Sol transacts or has transacted business in the Central District of California.

6. Defendant Fernando Gonzalez Lopez ("Gonzalez") is the sole officer and director of Del Sol. 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

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1 purchase merchandise including, but not necessarily limited to,  
2 specified brand-name designer colognes, perfume, watches, and  
3 musical compact discs ("CDs") at prices ranging from about \$213 to  
4 \$250. Defendants also have told consumers that this merchandise  
5 will include brands such as Calvin Klein, Tommy Hilfiger, Caroline  
6 Herrera, Polo and Hugo Boss. Defendants have told consumers they  
7 could select the recording artists that will be featured on the  
8 musical CDs. Many consumers have responded to these solicitations  
9 by agreeing to purchase Defendants' merchandise.

10 11. Defendants' telemarketers have informed consumers that  
11 they do not accept personal checks or credit cards. They have  
12 explained that the shipment will arrive Cash on Delivery  
13 ("C.O.D."), and have advised consumers to obtain a money order to  
14 give to the delivery person. Defendants have shipped the  
15 merchandise via United Parcel Service ("UPS"), whose C.O.D.  
16 policies prohibit the opening and inspection of packages before  
17 payment.

18 12. Consumers who have provided a money order and have  
19 accepted and opened the Defendants' package soon find that they  
20 have not received what they were promised. Rather than the  
21 promised laptop computer, digital video camera, or other prize of  
22 commensurate value, Defendants have shipped consumers an  
23 inexpensive electronic device that enables them to access the  
24 Internet via their television sets or other inexpensive gadgets.

25 13. Rather than the promised specified brand-name  
26 merchandise and musical CDs featuring the consumers' selected  
27 artists, Defendants have shipped consumers bottles of inexpensive  
28 perfume or cologne, imitation ("knock-off") versions of brand-name

1 watches (such as "Calvin Hill"), and CDs from recording artists  
2 they did not request.

3 14. Numerous consumers who have attempted to telephone  
4 Defendants to complain about the products and seek refunds have  
5 been unable to reach an operator, have been put on hold for long  
6 periods, or have been disconnected. In several instances where  
7 consumers were able to reach Defendants, Defendants' telemarketers  
8 have told consumers that they have received the correct order, and  
9 that Defendants do not provide refunds.

10 15. Since at least October 17, 2003, Defendants have called,  
11 or have caused telemarketers to call, consumers' telephone numbers  
12 that are on the National Do Not Call Registry, a list of consumers  
13 who do not wish to receive certain types of telemarketing calls,  
14 maintained by the Commission pursuant to 16 C.F.R. Part 310.

15 16. Defendants have not established or implemented written  
16 procedures or trained personnel on compliance with the Do Not Call  
17 Registry requirements of the TSR.

18 17. Defendants, in numerous instances, called numbers  
19 protected by the Registry even though Defendants purportedly  
20 purchased lists of phone numbers ("lead lists") from list brokers  
21 and purportedly relied on representations from these list brokers  
22 that the lead lists had been properly scrubbed against the  
23 Registry and that all registered numbers had been removed.  
24 Therefore, Defendants have not used a process to prevent  
25 telemarketing to any telephone number on the National Do Not Call  
26 Registry employing a version of the Do-Not-Call Registry obtained  
27 from the Commission no more than thirty-one (31) days prior to the  
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1 date any call is made or maintained records documenting this  
2 process.

3 18. Since at least October 17, 2003, Defendants have called,  
4 or have caused telemarketers to call, telephone numbers in various  
5 area codes without first paying the annual fee for access to the  
6 telephone numbers within such area codes that are included in the  
7 National Do Not Call Registry.

8 **THE FEDERAL TRADE COMMISSION ACT**

9 19. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a),  
10 prohibits unfair or deceptive acts or practices in or affecting  
11 commerce. Misrepresentations or omissions of material fact  
12 constitute deceptive acts or practices prohibited by Section 5(a)  
13 of the FTC Act.

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

15 **COUNT I**

16 **MISREPRESENTATION OF PRIZE OFFER**

17 20. In connection with the marketing of prize offers,  
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1 COUNT II

2 **MISREPRESENTATION OF MERCHANDISE ACCOMPANYING PRIZE OFFER**

3 23. In connection with their prize offer, Defendants have  
4 represented, expressly or by implication, that Defendants will  
5 ship to consumers, who pay a price ranging from about \$213 to  
6 \$250, specified brand-name merchandise and musical CDs featuring  
7 recording artists selected by the consumers.

8 24. In truth and in fact, Defendants did not ship to  
9 consumers, who paid a price ranging from about \$213 to \$250,  
10 specified brand-name merchandise or musical CDs featuring  
11 recording artists selected by the consumers. Instead, Defendants  
12 have shipped consumers bottles of inexpensive perfume or cologne,  
13 imitation ("knock-off") versions of designer watches, and CDs of  
14 recording artists that the consumers did not select.

15 25. Therefore, the representation set forth in paragraph 23  
16 is false and misleading and constitutes a deceptive act or  
17 practice, in or affecting commerce, in violation of Section 5(a)  
18 of the FTC Act, 15 U.S.C. § 45(a).

19 THE FTC'S TELEMARKETING SALES RULE

20 AND THE NATIONAL DO NOT CALL REGISTRY

21 26. Congress directed the FTC to prescribe rules prohibiting  
22 abusive and deceptive telemarketing acts or practices pursuant to  
23 the Telemarketing Act, 15 U.S.C. §§ 6101-6108, in 1994. On August  
24 16, 1995, the FTC promulgated the Telemarketing Sales Rule (the  
25 "Original TSR"), 16 C.F.R. Part 310, which became effective on  
26 December 31, 1995.

27 27. On or after December 31, 1995, the TSR has prohibited  
28 telemarketers and sellers from making any false or misleading





1 a given area code unless the seller first has paid the annual fee  
2 for access to the telephone numbers within that area code that are  
3 included in the National Do Not Call Registry. 16 C.F.R.  
4 § 310.8(a) and (b).

5 34. Pursuant to Section 3(c)(4) of the Telephone Marketing Act, 15036  
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1 the Court may deem appropriate to halt and redress violations of  
2 the FTC Act. The Court, in the exercise of its equitable  
3 jurisdiction, may award other ancillary relief, including but not  
4 limited to, rescission of contracts and restitution, and the

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