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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA,

Plaintiff,

v.

ELECTRIC MOBILITY
CORPORATION,
d/b/a RASCAL SCOOTERS,
a New Jersey corporation, and

MICHAEL J. FLOWERS,
individually and as an officer of
Electric Mobility Corporation,

Defendants.

Civil Action No.

**COMPLAINT FOR CIVIL
PENALTIES, PERMANENT
INJUNCTION, AND OTHER
RELIEF**

Plaintiff, the United States of America, acting upon notification and

authorization to the Attorney General by the Federal Trade Commission (“FTC” or

“Commission”) pursuant to Section 16(c)(1) of the Federal Trade Commission

Act (“FTC Act”), 15 U.S.C. § 56(a)(1), for its Complaint alleges:

1. Plaintiff brings this action under Sections 5(a), 5(m)(1)(A), 13(b), and 16(a) of the FTC Act, 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b), and 56(a), and Section 6 of the Telemarketing and Consumer Fraud and Abuse Prevention Act (the “Telemarketing Act”), 15 U.S.C. § 6105, to obtain monetary civil penalties, a permanent injunction, and other equitable relief from Defendants for their violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the FTC’s Telemarketing Sales Rule (the “TSR” or “Rule”), 16 C.F.R. Part 310, as amended.

principal place of business at 591 Mantua Boulevard, Sewell, NJ 08080. EMC manufactures and sells electric scooters and power wheelchairs for mobility-challenged consumers (“mobility devices”). EMC is a seller and telemarketer that initiates outbound telephone calls to induce consumers to purchase goods from EMC. Defendant EMC transacts or has transacted business in this District.

5. Defendant Michael J. Flowers is the president, a director, and an owner of EMC. In connection with the matters alleged herein, he resides or has transacted business in this District. At all times material to this Complaint, acting alone or in concert with others, he has had the authority and responsibility to prevent or correct the unlawful telemarketing practices of EMC, and has formulated, directed, controlled, or participated in the acts and practices of EMC including the acts and practices set forth in this Complaint.

COMMERCE

6. At all times relevant to this Complaint, Defendants have maintained a substantial course of trade or business in the offering for sale and sale of goods or services via the telephone, in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

THE TELEMARKETING SALES RULE
AND THE NATIONAL DO NOT CALL REGISTRY

7. Congress directed the FTC to prescribe rules prohibiting abusive and deceptive telemarketing acts or practices pursuant to the Telemarketing Act,

amended it in 2003, and amended certain provisions thereafter. 16 C.F.R. Part 310.

8. Among other things, the 2003 amendments to the TSR established a

do not call registry maintained by the Commission (the "National Do Not Call

telemarketing donotcall.gov to pay the fee(s) if required, and to download the

numbers not to call.

11. Under the TSR, an “outbound telephone call” means a telephone call

initiated by a telemarketer to deliver the purchase of goods or services or to solicit

14. Such written agreement must be “clear and conspicuous,” 68 Fed. Reg. 4580, 4634, and “authorization” obtained through subterfuge, such as sweepstakes entry forms used in a deceptive manner, is ineffective and does not constitute express consent under the Rule, 16 C.F.R. § 310.4(b)(1)(iii)(B)(i). *See* “The Written Permission to Call Exemption,” Complying with the Telemarketing Sales Rule, available at <http://business.ftc.gov/documents/bus27-complying-telemarketing-sales-rule>.

15. A seller or telemarketer may also initiate an outbound telephone call

to a consumer if the consumer has provided the consumer with a written agreement that the seller has an

“established business relationship” (“EBR”) with the consumer, 16 C.F.R.

16. 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), a violation~~

of the TSR constitutes an unfair or deceptive act or practice in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

DEFENDANTS' BUSINESS ACTIVITIES

Calls to Consumers on the National Do Not Call Registry

17. EMC is a "seller" and "telemarketer" engaged in "telemarketing," as defined by the TSR, 16 C.F.R. § 310.2.

18. EMC is a seller of mobility devices and a telemarketer that initiates outbound telephone calls to consumers in the United States to induce the purchase of its products.

19. Defendants have engaged in telemarketing by a plan, program, or campaign conducted to induce the purchase of goods or services by use of one or

~~other means, including but not limited to, interstate telephone call~~

21. Almost two million of the over three million outbound calls that EMC has made since October 17, 2003 to telephone numbers on the National Do Not Call Registry in violation of the TSR were made to telephone numbers that were provided by consumers who entered sweepstakes promoted by EMC and with whom EMC never had an EBR. The remainder of the calls were made to consumers with whom EMC had an EBR that had expired; EMC attempted to revive the EBR by inducing those consumers to enter its sweepstakes.

22. Through publications, mailings, broadcasting and the Internet, EMC has encouraged consumers to enter sweepstakes to win a free Rascal Scooter, a mobility device marketed by the Defendants. The sweepstakes entry forms that


23. The completed sweepstakes entry forms referred to in paragraph 22

are not express written agreements that clearly evidence consumer authorization to



receive calls from EMC. The forms did not advise consumers clearly and

conspicuously that supplying a telephone number on the entry form would



telephone numbers on the National Do Not Call Registry in violation of the TSR, 16 C.F.R. § 310.4(b)(1)(iii)(B).

CONSUMER INJURY

_____ suffered and will continue to suffer injury as a result

of Defendants' violations of the TSR. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

27. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and such other relief as the Court may deem appropriate to halt and redress violations of any provision of law enforced by the FTC.

28. Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A), as

20 This Court, in the exercise of its equitable jurisdiction, may award

ancillary relief to remedy injury caused by Defendants violations of the FTC Act and the TSR.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that this Court, as authorized by Sections 5(a), 5(m)(1)(A), and 13(b) of the FTC Act, 15 U.S.C. §§ 45(a), 45(m)(1)(A), and 53(b), and pursuant to its own equitable powers:

A. Enter judgment against Defendants and in favor of Plaintiff for each violation alleged in this Complaint;

B. Award Plaintiff monetary civil penalties from each Defendant for every violation of the TSR;


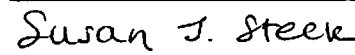
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