

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

FEATURE FILMS FOR FAMILIES, NC.,

CORPORATIONS FOR CHARACTER, LC.,

FAMILY FILMS, INC., and as owner and principal

officer of FEATURE FILMS FOR
FAMILIES, NC., CORPORATIONS
FOR CHARACTER, LC., and FAMILY
FILMS OF UTAH, INC.,

Defendants.

Case No. 11197

COMPLAINT FOR CIVIL
PENALTIES, PERMANENT
INJUNCTION, AND OTHER
EQUITABLE RELIEF;
JURY TRIAL DEMAND

Plaintiff, the United States of America, acting upon notification and authorization of the
Attorney General by the Federal Trade Commission ("FTC" or "Commission"), pursuant to
Section 16(a)(1) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 56(a)(1)

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.

Baker III Trust and co-trustee of the Sharon O Baker Trust. At all times material to this Complaint, Baker has had the authority and responsibility to prevent or correct unlawful telemarketing practices of FFF, C4C, and Family Films, and has formulated, directed, controlled, or participated in the acts and practices of FFF, C4C, and Family Films, including the acts and practices set forth in this Complaint.

8. At all times relevant to this Complaint, Defendants have maintained a substantial course of conduct in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

9. Defendants transact and have transacted business in this District by selling DVDs to consumers in this District; by making telephone calls to consumers in this District to induce the sale of DVDs and theater tickets; and by soliciting potential donors in this District for charitable contributions. Defendant C4C is registered as a professional solicitor pursuant to the Florida Solicitation of Contributions Act, Fla. Stat. Ch. 496, and has contracted with purported charities in this District to solicit for contributions. In the course of telemarketing for contributions and to induce sales, Defendants have made or caused telephone calls to be made to consumers and potential donors in this District, including those that violate the FTC Act and the SR as described below in Counts through VII.

DEFENDANTS' BUSINESS ACTIVITIES

10. Since at least 2007, Defendants have engaged in or caused others to engage in telemarketing through plans, programs, or campaigns conducted to induce the purchase of goods or services, and to induce charitable contributions, by use of one or more telephones and which involve more than one interstate telephone call.

11. FFF acquires, produces, and distributes family-friendly films on DVD. FFF also initiates telephone calls to consumers in the United States to induce the sale of theater tickets or the purchase of FFF DVDs. Defendant FFF is both a “seller” and “telemarketer” engaged in “telemarketing” as defined by the TSR, 16 C.F.R. § 310.2.

12. C4C initiates telephone calls to consumers in the United States to induce the purchase of FFF’s goods or services, and to solicit contributions for purported charities. Defendant C4C is a “telemarketer” engaged in “telemarketing,” as defined by the TSR, 16 C.F.R. § 310.2.

13. Family Films employs the management personnel for FFF and C4C, including the sales managers, financial personnel, and telemarketing compliance counsel. Family Films employs and supervises and directs the sales and telephone solicitation activities of FFF and C4C. Defendant Family Films is both a “seller” and “telemarketer” engaged in “telemarketing,” as defined by the TSR, 16 C.F.R. § 310.2.

14. Defendant Baker, as owner and chief executive of FFF, C4C, and Family Films, has been involved in conceiving telemarketing campaigns, drafting the telemarketing scripts used by FFF and C4C employees, and deciding whether the telemarketing campaigns conducted by FFF and C4C should include calls to telephone numbers on the National Do Not Call Registry maintained by the Commission under 16 C.F.R. § 310.4(b)(iii)(B) (the “National Do Not Call Registry” or “Registry”).

15. Defendants FFF, C4C, and Family Films have operated as a common business enterprise (hereinafter, “the Family Films Enterprise”) while engaging in the deceptive acts and practices and other violations of law alleged below. Defendants in the Family Films Enterprise have shared personnel, managers, telephone numbers, telecommunications services, internet domains, and other resources in conducting the telemarketing campaigns described below, and have

shared a common business location in Murray, Utah. Because these Defendants have operated as a common enterprise each of them is jointly and severally liable for the deceptive acts and practices and violations of law alleged below.

16. Defendant Baker is jointly and severally liable for the conduct of Defendants FF, C4C, and Family Films because he has had the authority to control and direct the activities of these Defendants, he had knowledge of their misrepresentations and other misconduct of these Defendants, and has participated in approving or ratifying the practices that resulted in the abusive pattern of telephone calls made by the Defendants in the Family Films Enterprise

Telemarketing to Promote FFF DVDs and Baker's Movie

17. Defendants FF and C4C, at the direction of Family Films, have conducted telemarketing campaigns to promote the sale of DVDs distributed by FFF or movies produced by Baker. In conducting this telemarketing Defendants have repeatedly made telemarketing calls to telephone numbers listed on the National Do Not Call Registry, and have conducted campaigns without taking steps to prevent calls from being made to telephone numbers on the National Do Not Call Registry.

1. Telephone Calls by C4C Selling FFF DVDs

18. In 2008 and 2009, C4C conducted a nationwide calling campaign under the name "Kids First," which is part of a trademark used by the Coalition for Quality Children's Media ("CQCM"), to signify its approval of children's programming. The telephone calls were made pursuant to agreements that provided that C4C would make syndicated solicitation calls for a market survey

handling costs, and gave C4C the right to use information obtained during the campaign for C4C's own purposes, including marketing and solicitation.

19. The telephone calls made by C4C under the name Kids First were made in connection with "telemarketing" as defined in 15 U.S.C. § 6106(4) because they were part of a program conducted to induce the purchase of FFF's DVDs and involved more than interstate telephone calls.

20. During 2008 and 2009, C4C representatives, using recordings or reading from scripts, made telephone calls to carry out this campaign and identified themselves as "With Kids 1st." The recordings and scripts did not identify C4C or FFF as sellers or entities on whose behalf the calls were being made.

21. During 2008 and 2009, C4C representatives made telephone calls in which they stated that they were just calling to offer to send the recipient of the call two complimentary DVD movies, and to request that the recipients give feedback on whether the movies should be included in a list of recommended movies. The C4C representatives did not disclose during these initial calls that those who accepted their offer would receive a call soliciting them to purchase additional movies.

22. During 2008 and 2009, C4C representatives made follow-up telephone calls to persons who had agreed to accept the complimentary DVDs. During this second call, C4C representatives asked the recipient of the call whether his or her family enjoyed the movies and offered the recipient the opportunity to purchase two additional movies for \$12.95 each, plus shipping and handling charges. If the recipient declined to purchase two movies, the bar urged him or her to purchase one movie. In addition, C4C representatives told recipients of the calls

that the producers of the films wanted to give them a \$5 credit that they could use toward the future purchase of FFF products.

23. During 2008 and 2009, when the C4C representatives offered to sell DVDs during the follow-up call, they told the recipients of the call “[a]ll the proceeds of this fundraiser will help us finish up creating this recommended viewing list to help parents and grandparents, like us, with a list we can trust.” The C4C representatives did not disclose that proceeds collected from the sale of DVDs would be paid to Defendants C4C or to FFF.

24. FFF or C4C received at least 93 percent of the total proceeds collected from recipients of the calls that C4C made using the name Kids First during 2008 and 2009.

25. In making telephone calls under the name Kids First in 2008 and 2009, C4C did not prevent calls from being placed to telephone numbers listed on the National Do Not Call Registry and did not limit calls to persons who had previously purchased or inquired about FFF products. C4C representatives told recipients of the calls that they were calling “every number in your area.”

26. In making calls under the name Kids First, C4C initiated telephone calls to more than five million telephone numbers of persons who had placed their numbers on the National Do Not Call Registry before the telephone call.

2. FFF Telephone Calls Promoting The Velveteen Rabbit

27. In early 2009, a film produced by Baker, ~~LLP~~ ~~LLP~~, was screened in theaters nationwide prior to its release on DVD.

28. Prior to and during the period that ~~LLP~~ ~~LLP~~ was screened in theaters, FFF representatives made approximately eight million unsolicited telephone calls to households in areas where the movie was being screened. The FFF representatives encouraged the recipients

of the calls to purchase tickets to see the film, and stated that producers of the movie would give the consumer an incentive to purchase a ticket. In some telephone calls, the FFF representatives stated that the producers would give the recipient of the call a credit toward the purchase of FFF DVDs equal to the cost of the movie ticket. In some calls, the FFF representatives told consumers that the producers of the movie guaranteed that the recipients of the call and their families would enjoy the movie and, if not, the recipients of the call could choose a free DVD movie from the producers' library.

29. The telephone calls made by FFF to encourage ticket sales for The Velveteen Rabbit were made in connection with "telemarketing" as defined in 15 U.S.C. § 6106(4), because they were part of a program conducted to induce the purchase of theater tickets and FFF's DVDs, and involved more than one interstate telephone call.

30. In making telephone calls to encourage ticket sales for The Velveteen Rabbit, FFF did not prevent calls from being placed to telephone numbers listed on the National Do Not Call Registry and did not limit calls to persons who had previously purchased or inquired about FFF products. FFF told recipients of the calls that they were calling "every combination of numbers in the areas where" the movie was opening.

31. In making telephone calls to encourage ticket sales for The Velveteen Rabbit, FFF initiated telephone calls to more than two and a half million telephone numbers of persons who had placed their numbers on the National Do Not Call Registry before the telephone call.

32. In making telephone calls to encourage ticket sales for The Velveteen Rabbit, FFF representatives began the calls by announcing that they were calling "on behalf of the producers of a great new movie coming to theaters and this is not a sales call." FFF representatives responded to consumers who asked who was calling by saying that they were "calling on behalf of

the producers of a new movie called the Velveteen Rabbit.” The recordings and scripts used by FFF to conduct these calls did not identify FFF, Family Films, or Baker as the seller behind the calls.

33. In making telephone calls to encourage ticket sales for FFF arranged for the phrase “VELVETEEN” or “VELVETEENMOV” to be transmitted to caller identification services as the name of the party making the call.

3. FFF Telephone Calls to Sell DVDs

34. FFF regularly places telephone calls to induce the sale of FFF DVDs to persons who, according to FFF, have previously purchased products from FFF or have made inquiries about FFF products as part of a telemarketing program.

35. FFF has made telephone calls to induce the sale of FFF DVDs to persons whose telephone number is listed on the National Do Not Call Registry even though the person has not made a purchase from FFF in the eighteen (18) months preceding the telephone call, and the person has not made any inquiry regarding FFF’s products in the three months preceding the telephone call.

36. Since June 1, 2007, FFF has made approximately nine million telephone calls to telephone numbers that were listed on the National Do Not Call Registry at the time of the telephone call, in circumstances where FFF’s records do not show that the recipients of the calls had purchased FFF’s products or services during the eighteen (18) months immediately preceding the telephone call, or had made an inquiry about FFF’s products or services during the three (3) months immediately preceding the telephone call.

37. In the course of initiating these telephone calls to induce the purchase of FFF DVDs, Defendants arranged for names other than C4C, FFF, or Baker such as “CUSTOMER SVC

FE” and “FAMILY VALUE CB” to be transmitted to caller identification services as the name of the entity calling the consumer.

Telemarketing for Contributions

38. C4C, as a professional solicitor, initiates telephone calls to request contributions on behalf of organizations with names related to fraternal police organizations and firefighting, in campaigns that involve more than one interstate telephone call.

39. By contract, the organizations pay most of the donations received to C4C as fees and retain 15 to 33% of the money donated.

40. C4C has conducted solicitations for organizations that use all or most of what remains of the contributions after deducting C4C’s fees to pay salaries or operational expenses of the organizations, or pay debt incurred because of such salaries or expenses, rather than using the contributions for charitable activities.

41. In soliciting contributions for organizations with names related to fraternal police organizations and firefighting, C4C has represented in telephone calls to potential donors that:

- a. the organization for which C4C is soliciting provides law enforcement training, safety-related officer training, bullet proof vests, death benefits, or financial assistance to families of officers killed in the line of duty, firefighters, or victims of fires or disaster;
- b. “any support you [the potential donor] can give goes to” or “goes directly into” safety-related officer training, providing supplies like bullet proof vests, aid to families, fire and disaster victims, or other charitable programs described by C4C representatives during the solicitation;

telephone solicitation, or ~~not~~ only an incidental portion of the contributions ~~received~~ from donors to such ~~activities~~.

45. C4C has made the ~~representations~~ described in Paragraph 42 in telemarketing campaigns for organizations that spend significant amounts of the contributions ~~received~~ on telemarketers, overhead, staff and associated costs; have ~~not~~ hired a ~~new~~ fundraising company that has decreased administrative costs; and have ~~not~~ doubled or ~~newly~~ doubled the ~~percentage~~ of contributions that go to the organization or its charitable efforts.

46. In soliciting contributions for organizations with names related to fraternal police organizations and firefighting, C4C representatives encourage potential donors to immediately authorize payment, rather than wait for the arrival of written materials, by stating that if the donor authorizes payment over the telephone by credit or debit card, more of the donor's support will go to local officers, to the victims of fires, ~~or~~ other charitable programs, "as opposed to the administrative costs."

47. In fact, under C4C's contracts to conduct charitable solicitations, a donor's agreement to immediately authorize payment over the telephone does not increase the fraction of the donation that goes to the organization or its charitable programs.

Do-Not-Call Requests Directed to the Family Film s Enterprise

48. Consumers and potential donors who have received telemarketing calls from C4C and FFF have responded by telling C4C and FF representatives that they do not wish to receive such calls again.

49. In numerous instances Defendants in the Family Films Enterprise have initiated, or caused to be initiated on their behalf, telephone calls to the telephone numbers of persons who

- a. a representative calling under the name of Kids First is just calling to request the call recipient's review of movies for a recommended movie list;
- b. all the proceeds from the sale of DVDs by the representatives calling under the name of Kids First will be used to help finish up creating a recommended viewing list;
- c. the organization on behalf of which the representative is calling to solicit contributions uses and will use more than an incidental portion of the contributions to provide law enforcement training, safety-related officer training bullet proof vests, death benefits or financial assistance to families of officers killed in the line of duty firefighters, or victims of fire or disaster;
- d. any contributions received from donors go to, or go directly to, particular charitable programs described during the telephone call;
- e. a specific percentage of every contribution goes to fund law enforcement training, death benefits, and assistance to families of officers killed in the line of duty;
- f. the full amount of a prior pledge has been "actually budgeted" for charitable programs described by C4C representatives;
- g. the amount of the contributions that C4C or the organization for which it is soliciting uses for administrative costs is a "de minimis amount;"
- h. C4C or the organization for which it is soliciting has recently hired a new fundraising company that decreased administrative costs;
- i. C4C or the organization for which it is soliciting has recently doubled or almost doubled the percentage of contributions that goes to the charitable organization for which contributions are being solicited; and

j. if the donor authorizes payment over the telephone by credit or debit card, more of the donor's support will go to local officers, the victims of fire or other charitable programs, "as opposed to the administrative costs."

55. In truth and in fact:

- a. the representatives who made calls under the name Kids First were not just calling to request reviews of movies, but to sell DVDs to persons who were to review movies, and offer credits to encourage future purchases of FF's DVDs;
- b. not all proceeds from the sale of DVDs by the representative calling under the name of Kids First were used to create a recommended viewing list as at least 93 percent of the profit is diverted to the future

58. It is a deceptive telemarketing act or practice, and a violation of the TSR, for any seller or telemarketer to make a false or misleading statement to induce a person to pay for goods or

63. The FTC allows sellers, telemarketers, and other permitted organizations to access the

Reg _____

manner disclose the identity of the seller, that the purpose of the call is to sell goods or services, and the nature of the goods or services. 16 C.F.R. § 310.4(d)

70. 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), a violation of the FR 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).

COUNT II

Making False Statements in Connection with Telemarketing

71. In numerous instances in the course of telemarketing for sales of FFF products or charitable contributions, Def

COUNT IV
Ignoring Entity-Specific Do Not Call Requests

74.

77. The practices of the Defendants in the Family Films Enterprise alleged in Paragraph 76 are abusive telemarketing practices that violate Subsections 310.4(d)(1), (2), and (3) of the TSR, 16 C.F.R. § 310.4(d)(1), (2), (3).

COUNT VII
Abandoning Calls

78. In numerous instances in connection with telemarketing Defendants in the Family Films Enterprise have abandoned, or caused others to abandon, an outbound telephone call by failing to connect the call to a sales representative within two (2) seconds of the completion of the person answering the call, in violation of the TSR, 16 C.F.R. § 310.4(b)(1).

INJURY TO THE PUBLIC INTEREST

79. Consumers and potential donors in the United States suffered and will suffer injury as a result of Defendants' violations of Section 5(a) of the FTC Act and the TSR. 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 and potential donors, and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

80. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and other equitable and ancillary relief as it may deem appropriate to prevent and remedy any violation of any provision of law enforced by the FTC, including an order that a wrongdoer disgorge its ill-gotten gains.

81. Defendants have violated the TSR as described above with knowledge or knowledge fairly implied on the basis of objective circumstances that such acts are unfair or deceptive and is

prohibited by the Rule, as set forth in Section 5(m)(1)(A) of the FTC Act, 15 U.S.C.

§ 45(m)(1)(A).

82. Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A), as modified by Section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended, and as implemented by 16 C.F.R. § 1.98(d), authorizes this Court to award monetary civil penalties of up to \$11,000 for each violation of the TSR on or before February 9, 2009, 2009. À

D. Award such relief as the Court finds necessary to redress injury resulting from Defendants' violations of the TFC Act and the TSR, including but not limited to, the disgorgement of ill-gotten monies, rescission or reformation of contracts, restitution, and the refund of monies paid;

E. Award Plaintiff monetary civil penalties against each Defendant for each violation of the TSR alleged in Counts II through VII of this Complaint.

F. Award Plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

Dated: May 5, 2011

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Respectfully submitted,

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