

1 WILLARD K. TOM
General Counsel

2 KAREN D. DODGE
kdodge@ftc.gov
3 MARISSA J. REICH

4 mreich@ftc.gov
GUY G. WARD
5 gward@ftc.gov

6 Federal Trade Commission
55 West Monroe Street, Suite 1825
Chicago, Illinois 60603
7 (312) 960-5634 (Telephone)
(312) 960-5600 (Facsimile)

8 RAYMOND E. McKOWN
9 Cal. Bar No. 150975, rmckown@ftc.gov
Federal Trade Commission
10 10877 Wilshire Boulevard, Suite 700
Los Angeles, California 90024
11 (310) 824-4343 (Telephone)
(310) 824-4380 (Facsimile)

12 Attorneys for Plaintiff
13 FEDERAL TRADE COMMISSION

14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**

16
17 FEDERAL TRADE COMMISSION,
18 Plaintiff,

19 v.
20

21 AMERICAN TAX RELIEF LLC, d/b/a
American Tax Relief, *et al.*,

22 Defendants, and

23 YOUNG SOON PARK, a/k/a
24 Young S. Son, *et al.*,

25 Relief Defendants.
26

Case No. CV 11-6397 DSF (Ex)

**PLAINTIFF FTC'S REPLY IN
SUPPORT OF THE FTC'S
MOTION FOR SUMMARY
JUDGEMENT ON ALL
COUNTS AGAINST ALL
DEFENDANTS AND RELIEF
DEFENDANTS; OR IN THE
ALTERNATIVE, FOR
SUMMARY ADJUDICATION
OF CLAIMS**

Date: August 6, 2012
Time: 1:30 p.m.
Ctvm: 840 (Roybal Federal Bldg.)

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1 **I. INTRODUCTION**

2 The Federal Trade Commission (“FTC”) has met its burden in proving that

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1 “qualified” for tax relief. Defendants’ commission-based sales representatives told
2 consumers who called in response to those ads that they did, in fact, “qualify” for
3 tax relief that would significantly reduce their tax debts, typically an Offer in
4 Compromise (“OIC”) or Penalty Abatement (“PA”). Only upon being told they
5 “qualified” did consumers agree to pay ATR thousands of dollars for its services.
6 Yet, at the time Defendants’ sales representatives told individual consumers that
7 they “qualified,” those representatives had no idea whether the consumer qualified
8 or not. Indeed, even a tax practitioner with years of experience cannot possibly
9 determine in a short telephone call whether a particular consumer “qualifies” for
10 these forms of tax relief. And the undisputed evidence shows that the vast majority
11 of Defendants’ customers did not actually qualify for, or obtain, the significant
12 reductions they were promised.

13 Finally, on Count III, it is undisputed that Defendants sometimes charged
14 consumers without their consent. Although it is impossible to quantify the number
15 of such instances in a case like this, the practice clearly was widespread. The FTC
16 is therefore entitled to summary judgment on Count III and to injunctive relief
17 prohibiting further unauthorized charges.

18 **II. BACKGROUND AND MATERIAL FACTS**

19 **A. Defendants’ Deceptive Advertising Claims**

20 The uncontroverted facts demonstrate that ATR’s ads were widely
21 disseminated and included: 1) claims that ATR had already reduced the tax debts
22 of thousands; 2) testimonials of supposed customers who described dramatic
23 reductions in their tax debts; and 3) claims that ATR could help people
24 significantly reduce their tax debt. (RF 151, 158-59, 161, 164, 174, 181, 191, 200-
25 01, 215, 220-23, 233-35, 237, 244, 246, 252-55.) Many of Defendants’ ads
26 encouraged consumers to call ATR for a “free consultation” to see if they
27 “qualified” for the advertised savings. (RF 158, 233-35.)

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¹ To attack the frequency of this claim, Defendants display a chart that supposedly includes all of ATR's ads. This chart is not only wrong (RF 464),

1 (RF 300.) In defending the propriety of these statements, Defendants claim that
2 their sales representatives “never intentionally lied to any caller.” (Opp. at 6:3-4.)
3 This does not matter, however, because the FTC need not show intent.

4 The evidence clearly demonstrates that consumers were deceived and that
5 Defendants’ business model was set up to do just that. There is no dispute that
6 commission-based sales representatives, including some with criminal records,
7 were charged with conducting “interviews” with prospective clients to determine
8 whether they “qualified” for tax relief. (RF 277-81.) The sales representatives’
9 training was limited to listening to other sales representatives’ calls, reading from
10 scripts, and then conducting their own calls. Regardless of what they “intended,”
11 these sales representatives simply were not qualified to make any determination
12 about consumers’ *potential* qualifications, let alone consumers’ *actual*
13 qualifications for tax relief. The undisputed evidence demonstrates that even an
14 experienced tax practitioner cannot possibly make a determination about a
15 consumers’ qualifications for tax relief in a short telephone call. (RF 113.)

16 Defendants further claim that the determinations made by their untrained
17 sales representatives were reached after entering information into a Call-In
18 Database “based on IRS Guidelines.” This argument is a red herring. First, there
19 is no evidence that the database is “based on IRS Guidelines,” and in fact, the
20 evidence shows otherwise. (RF 113-14, 116-22, 128, 284-91, 529.) Second,
21 Defendants can only make this argument for OICs – it is undisputed that the
22 database had no ability to assess consumers’ *possible* qualifications for any other
23 form of tax relief. (RF 483, 529.) Third, there is no dispute that the information
24 obtained from consumers during sales calls often was incomplete and inaccurate.

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27 ²(...continued)
28 revealed, the period was about to or already had expired. (RF 339-40, 373-75.)

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1 Defendants offer essentially two arguments. First, they suggest the claim is not
2 false because ATR “obtained successful tax relief results” for thousands of clients.
3 Second, they submit that even if the claim was false, it was neither material nor
4 reasonably relied upon by the consumers. Both arguments are baseless.

5 As an initial matter, Defendants’ only evidence of their “successful tax relief
6 results” is in the form of summary spreadsheets “verified” by defense counsel’s
7 paralegal. (RF 471-77.) This “evidence” should be disregarded because the
8 summaries are unreliable and inadmissible under Fed. R. Civ. P. 1006. (*See* FTC’s
9 Objections to Defendants’ Evidence at General Objection 2.)

10 However, even if the Court were to consider this evidence, the “results”
11 described in the spreadsheets still do not controvert the FTC’s facts or put Count
12 One (or Two) in dispute. As described in the FTC’s Opening Memorandum,
13 Defendants claim to have *significantly reduced* the tax debts of thousands of
14 people. (Dkt. No. 325 at 15:13-16:13.) Of the 4,049 “successful tax relief results”
15 identified by Defendants’ paralegal, only 1,187 customers supposedly received tax
16 reductions, and even that number is inflated and unreliable. (RF 471; Opp. at 6:15-
17 17.) With respect to the remaining “results,” Defendants have not shown any tax
18 savings. Those include: 511 PAs, which Defendants admit were in amounts less
19 than the fees customers paid to ATR, and were in some cases not the relief
20 promised or were obtained by the customers themselves (RF 407-09, 473); 1,488
21 Installment Agreements, which do not reduce taxes and which ATR’s own ads
22 concede “get you nowhere” (RF 145-47, 231, 243, 473); 285 instances of “Tax
23 Debt Eliminated” and 185 instances of “Statute of Limitations,” neither of which
24 Defendants have connected to any service provided by ATR⁴ (RF 475-76); and 367
25 determinations of Uncollectable Status and 22 Lien Releases, neither of which

26
27 ⁴ Tax debts can be “eliminated” by paying the taxes or filing tax returns
28 or amended returns showing no liability. (RF 476.) Taxes that expire pursuant
to the statute of limitations do so on their own. (RF 109, 475.)

1 reduce tax debts. (RF 148-50, 474, 477). Thus, Defendants’ own numbers fail to
2 demonstrate that they significantly reduced the tax debts of thousands of ATR’s
3 customers, or that the limited reductions achieved were the result of ATR’s
4 services.

5 Defendants’ second argument, that their “thousands” claim was not material,
6 nor reasonable for consumers to have relied upon, likewise fails. Defendants do not
7 dispute that the success claims were expressly made in ATR ads, during sales calls,
8 and follow-up letters. (RF 161, 174, 181, 191, 200-01, 215, 221-24, 252, 254-55,
9 303-05, 362-63.) Express claims are presumed to be material. *FTC v. Pantron I*
10 *Corp.*, 33 F.3d 1088, 1095-96 (9th Cir. 1994). Similarly, it is presumptively
11 reasonable for consumers to rely upon an express claim. *FTC v. Data Med.*
12 *Capital, Inc.*, SA CV 99-1266 AHS (EEx), 2010 WL 1049977, at *27 (C.D. Cal.
13 Jan. 15, 2010) (citing *FTC v. Five-Star Auto Club, Inc.*, 97 F. Supp. 2d 502, 528
14 (S.D.N.Y 2000)). Defendants have offered nothing to rebut these presumptions.
15 Furthermore, they do not dispute that consumers were induced to call ATR based
16 on their advertising claims. (RF 267.) Indeed, the claim clearly was effective in
17 soliciting clients, given that Defendants made the claim consistently for a decade.
18 (RF 161, 166, 178, 188, 199, 205, 220, 252, 303.)

19 Because courts consider the overall “net impression” conveyed by a
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26 ⁵ Indeed, the court in one recent FTC case held that a defendants’
27 representations in ads and sales calls combined to create the deceptive “net
28 impression.” *FTC v. Wash. Data Res.*, – F. Supp. 2d –, 09-cv-2309-T-23TBM,
2012 WL 1415323, at *22 (M.D. Fla. Apr. 23, 2012).

1 impression. The ads conveyed that ATR could significantly reduce consumers' tax
2 debts because they already had done so for thousands of people. (RF 264-65.) In
3 the sales calls, Defendants' sales representatives often repeated the "thousands"

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1 Because ATR and its sales representatives had no idea at the time of making that
2 representation whether the consumer qualified or not, Defendants clearly obtained
3 consumers money through deceptive means. Having obtained consumers' money
4 in this way, it cannot be a defense to assert, as Defendants do, that the consumers
5 themselves are somehow at fault for providing inaccurate or incomplete
6 information.

7 **C. The FTC is Entitled to Summary Judgment on Count III**

8 In response to the FTC's evidence that they charged consumers without
9 authorization, Defendants do not attempt to dispute the testimony of individual
10 consumers or the fact that ATR had a pattern of complaints about unauthorized
11 charges. Instead, Defendants claim that consumers provided their consent in
12 unrecorded calls and that ATR had a practice of obtaining written authorization for
13 credit card charges. Neither of these responses addresses the FTC's undisputed
14 evidence that: (1) ATR sales representatives sometimes pressured consumers who
15 had not agreed to purchase ATR's services to provide account information and
16 then assessed charges to their accounts (RF 410-12); and (2) ATR sometimes
17 assessed additional charges to the accounts of consumers who had only authorized
18 an initial charge. (RF 420-21.) That evidence stands unrebutted, and thus, the
19 FTC is entitled to summary judgment on Count III. Because it is impossible to
20 quantify the number of instances in which ATR charged consumers without their
21 authorization, the FTC only seeks injunctive relief on this count.

22 **D. Defendant Joo Park is Individually Liable**

23 Defendants do not dispute Defendant Hahn's liability, but instead focus their
24 efforts on challenging the individual liability of Joo Park. The undisputed
25 evidence establishes, however, that Park gD[uabl1 toui27go ountnow-1.gc-.aDs p6D[9538 R TE

1 Defendants concede that Park was the owner of ATR (indeed, they claim
2 ATR was simply a d/b/a of Park), visited ATR's offices, signed checks and
3 contracts on behalf of ATR, and controlled ATR's bank accounts. (RF 54-59, 64.)
4 Defendants further concede that Park was named in lawsuits challenging ATR's
5 deceptive practices, and that she signed settlement agreements and checks
6 satisfying judgments in connection with those lawsuits. (RF 60-62.) Defendants
7 also do not dispute that: (1) Park was aware of Hahn's criminal record, but still
8 permitted him to run ATR's operations; and (2) she knew since January 2009 that
9 ATR was being criminally investigated and that the criminal authorities executed
10 warrants on ATR in April 2010. (RF 63, 67-69.) In addition, Park invoked the
11 Fifth Amendment in refusing to respond to discovery, thereby entitling the FTC to
12 adverse inferences against her. The FTC's undisputed evidence and available
13 adverse inferences are more than sufficient to demonstrate Park's liability.

14 **E. The Scope of the Proposed Injunctive Relief is Appropriate**

15 An order banning Hahn and Park from engaging or participating in
16 telemarketing activities, and from marketing debt relief products and services, is
17 warranted in this case. Defendants' deception has persisted for over a decade,
18 despite a multitude of complaints and lawsuits, warnings from the Better Business
19 Bureau, a lawsuit filed by New York City Department of Consumer Affairs, and
20 even the execution of a criminal search warrant. (RF 422-25, 435-55.)
21 Furthermore, after the Preliminary Injunction was entered here, Defendants
22 attempted to covertly open another tax relief business. (RF 49, 76.) Hahn also has
23 a long history of defrauding consumers, and Park knew this when she handed Hahn
24 the keys to ATR. (RF 39-43, 63, 67.) To prevent future violations of the FTC Act,
25 a strong injunction is necessary. Contrary to Defendants' claims, courts in this
26 district have banned FTC defendants from an array of practices as final relief in
27 FTC cases. *See* FTC's Opening Memorandum at 22:20-26. (Dkt. No. 325.)
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1 **F. The Requested Equitable Monetary Relief is Appropriate**

2 The numbers used by the FTC to calculate consumers’ losses stand largely
3 unrebutted. Rather than contest those numbers, Defendants broadly argue that
4 certain groups of consumers should not be included in the redress calculation. For
5 instance, they first point to the “numerous forms of valuable relief” that ATR
6 purportedly obtained for its clients and argue that these consumers are not entitled
7 to restitution. But ATR gets no credit for such relief if it was not the type the
8 consumer was promised and paid for. *Figgie*, 994 F.2d at 604. Similarly, the
9 success rates of other tax practitioners is meaningless; unlike ATR, there is no
10 indication that those practitioners assured clients before even reviewing their
11 financial records that they “qualified” for particular forms of tax relief. Finally, the
12 fact that there were outstanding client files at the time the FTC sued Defendants
13 does not matter. The Receiver took over the business and attempted to obtain
14 whatever tax relief was available to customers where possible.

15 **IV. CONCLUSION**

16 The undisputed facts show that Defendants have violated each Count of the
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