UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

FEDERAL TRADE COMMISSION, Plaintiff, v. SUN BRIGHT VENTURES LLC; CITADEL ID PRO LLC; and BENJAMIN TODD WORKMAN, Defendants, and TRIDENT CONSULTING PARTNERS LLC; and GLENN ERIKSON, Relief Defendants.	Case No.____________ COMPLAINT FOR PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF Injunctive Relief Sought Filed Under Seal

Plaintiff, the Federal Trade Commission ("FTC" or "Commission") 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. §§ 6101-08, to obtain temporary, preliminary, and permanent injunctive relief, rescission or reformation of contracts, restitution, refund of monies paid, disgorgement of ill-gotten monies, 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 in violation of the FTC's Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a), 53(b), 6102(c), and 6105(b).

3. Venue is proper in this District under 28 U.S.C. §§ 1391(b)(2), (b)(3), (c)(1), (c)(2), (d), and 15 U.S.C. § 53(b).

SUMMARY OF THE CASE

4. Defendants target seniors using deceptive telemarketing calls to withdraw money from their bank accounts without authorization. Defendants obtain consumers' bank account information by misrepresenting their affiliation with the United States government and offering consumers free products or services. Using remotely created checks, defendants then illegally debit consumers' bank accounts. Consumers often learn of these unauthorized debits only after noticing them on their bank statements. Defendants have made millions of dollars in unauthorized debits without providing consumers with any product or service in exchange.

PLAINTIFF

5. The FTC is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58. The FTC enforces, *inter alia*, Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair and deceptive acts or practices in or affecting commerce, and the Telemarketing Act, 15 U.S.C. §§ 6101-6108, and the TSR, which prohibits deceptive and abusive telemarketing acts or practices.

6. The FTC is authorized to initiate federal district court proceedings by its own attorneys, to enjoin violations of the FTC Act and the TSR, and to secure such equitable relief as may be appropriate in each case, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies. 15 U.S.C. §§ 53(b), 56(a)(2)(A), 56(a)(2)(B), 57b, 6102(c), and 6105(b).

DEFENDANTS

7. Defendant Sun Bright Ventures LLC ("Sun Bright Ventures") is a Florida limited liability company with its principal place of business in Riverview, Florida. Sun

Bright Ventures transacts or has transacted business in this District and throughout the United States.

8.

COMMERCE

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

DEFENDANTS' BUSINESS PRACTICES

13. Since at least September 2013, Defendants have debited consumers' bank accounts without consumers' express informed consent, and sometimes without their knowledge. Since September 2013, Defendants have deposited more than $3 million into their own bank accounts by illegally debiting the bank accounts of thousands of consumers, many of whom are senior citizens.

14. Defendants engage in a deceptive telemarketing campaign to obtain consumers' personal bank account information, including their bank account and routing numbers.

15. Defendants' representatives often call consumers with whom they have no existing business relationship and whose telephone numbers are on the National Do Not Call Registry.

16. In some instances, Defendants debit consumers' bank accounts without having any communications with them at all.

17. During a typical telemarketing call, Defendants' representatives make several false representations. In numerous instances, they misrepresent that they are calling on behalf of, or are affiliated with, Medicare, a United States government program.

18. In numerous instances, Defendants' representatives state that, because of new changes to health care, they are providing consumers with a new Medicare card, or a package of information related to their Medicare benefits. In fact, Defendants do not provide

unlawful practices, such as unauthorized debiting of consumer accounts.

35. In determining what constitutes a "high" rate of return, a useful benchmark is the average industry rate of return in the ACH network. Currently, neither the banking industry nor the Federal Reserve Bank maintains specific information about the average industry return rates for RCCs.

36. However, NACHA does keep track of the average industry return rates for ACH debits to consumer accounts, which is a comparable consumer payment mechanism. According to NACHA data, the 2013 ACH average return rate was 1.42% for all debit transactions.

37. Since at least September 2013, Defendants' debits of consumers' bank accounts have resulted in extremely high return rates. The initial bank Defendants used to deposit their debits recorded a return rate of 68% between September 2013 and January 2014. The bank subsequently terminated their relationship with Defendants.

VIOLATIONS OF THE FTC ACT

38. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits "unfair or deceptive acts or practices in or affecting commerce."

39. Misrepresentations or deceptive omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act. Acts or practices are unfair under Section 5 of the FTC Act if they cause or are likely to cause substantial injury to consumers that consumers cannot reasonably avoid themselves and that is not outweighed by countervailing benefits to consumers or competition. 15 U.S.C. § 45(n).

COUNT I – Deceptive Representations Regarding Defendants' Affiliation

40. In numerous instances, Defendants represent, directly or indirectly, expressly or by implication, that they are contacting the consumer from, or on behalf of, or are otherwise affiliated with, one or more United States government entities.

41. In truth and in fact, Defendants are not contacting the consumer from, or on behalf of, and are not otherwise affiliated with, any United States government entity.

42. Therefore, Defendants' representations as set forth in Paragraph 40 of this Complaint are false and misleading and constitute a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT II – Deceptive Representations Regarding the Need For and Use of Consumers' Personal Information

43. In numerous instances, Defendants represent that they require consumers' personal information, including financial account information, to verify consumers' identities, and that this information will not be used to debit consumers' bank accounts.

44. In truth and in fact, Defendants do not need consumers' personal information for verification purposes and Defendants instead use this information to debit consumers' bank accounts.

45. Therefore, the making of the representation set forth in Paragraph 43 of this Complaint is false and misleading and constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT III — Unfair Unauthorized Debits

46. In numerous instances, Defendants debit or cause the debiting of consumers' bank accounts without the consumers' authorization or express informed consent.

47. Defendants' actions cause, or are likely to cause, substantial injury to consumers that consumers cannot reasonably avoid themselves and is not outweighed by countervailing benefits to consumers or competition.

48. Therefore, Defendants' practices as described in Paragraph 46 of this Complaint constitute unfair acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. §§ 45(a) and 45(n).

VIOLATIONS OF THE TELEMARKETING SALES RULE

49. Congress directed the FTC to prescribe rules prohibiting abusive and deceptive telemarketing acts or practices under the Telemarketing Act, 15 U.S.C. §§ 6101-6108. The FTC adopted the original TSR in 1995, extensively amended it in 2003, and amended certain sections thereafter. 16 C.F.R. Part 310.

50. Defendants are “sellers[s]” or “telemarketer[s]” engaged in “telemarketing,” and Defendants have initiated, or caused telemarketers to initiate, “outbound telephone call[s]” to consumers to induce the purchase of goods or services, as those terms are defined in the TSR, 16 C.F.R. § 310.2 (aa), (cc), and (dd)

51. Under the TSR, an “outbound telephone call” means a telephone call initiated by a telemarketer to induce the purchase of goods or services or to solicit a charitable contribution. 16 C.F.R.§ 302(v).

52. The TSR prohibits sellers and telemarketers from misrepresenting, directly or by implication, in the sale of goods or services, any of the following material information:

a. The total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of a sales offer. 16 C.F.R. § 310.3(a)(2)(i);

b. Any material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of a sales offer. 16 C.F.R. § 310.3(a)(2)(iii); or

c. A seller’s or telemarketer’s affiliation with, or endorsement or sponsorship by, any person or government entity. 16 C.F.R. § 310.3(a)(2)(vii).

53. The TSR prohibits any seller or telemarketer from causing billing information to be submitted for payment, or collecting or attempting to collect payment for goods or

services or a charitable contribution, directly or indirectly, without the customer's express verifiable authorization, except when the method of payment used is a credit card subject to protections of the Truth in Lending Act, 15 U.S.C. § 1601 *et seq.*, and Regulation Z, 12 C.F.R. § 226, or a debit card subject to the protections of the Electronic Fund Transfer Act, 15 U.S.C. § 1693 *et seq.*, and Regulation E, 12 C.F.R. § 205. 16 C.F.R. § 310.3(a)(3). When an audio recording of the customer's express oral authorization is used to satisfy this requirement, the TSR requires that the recording must clearly evidence the customer's authorization of payment for the goods or services that are the subject of the telemarketing transaction and the customer's receipt of all of the following information:

a. The number of debits, charges, or payments (if more than one);

b. the date(s) the debit(s), charge(s), or payment(s) will be submitted for payment;

c. the amount(s) of the debit(s), charge(s), or payment(s);

d. the customer's name;

e. the customer's billing information, identified with sufficient specificity such that the customer understands what account will be used to collect payment for the goods or services or charitable contribution that are the subject of the telemarketing transaction;

f. a telephone number for customer inquiry that is answered during normal business hours; and;

g. the date of the customer's oral authorization.

16 C.F.R. § 310.3(a)(3)(ii).

54. The TSR prohibits any seller or telemarketer from causing billing information to be submitted for payment, directly or indirectly, without the express informed consent of the customer. In any telemarketing transaction, the seller or telemarketer must obtain the

express informed consent of the customer to be charged for the goods or services and to be charged using the identified account. 16 C.F.R. § 310.4(a)(7).

55. The TSR prohibits telemarketers from initiating any outbound calls to a person when that person's telephone number is on the Do Not Call Registry. 16 CFR 310.4(b)(1)(iii)(B).

56. 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).

COUNT IV – Misrepresenting Affiliation with a Government Entity

57. In numerous instances, in connection with the telemarketing of their purported goods or services, Defendants represent that they are affiliated with, or have the endorsement or sponsorship of Medicare, a United States government program.

58. In truth and in fact, Defendants have no affiliation with Medicare or any United States government entity, and are not endorsed or sponsored by any such entity.

59. Defendants' misrepresentations, as alleged in Paragraph 57, constitute deceptive telemarketing acts or practices that violates Section 310.3(a)(2)(vii) of the TSR, 16 C.F.R. § 310.3(a)(2)(vii).

COUNT V – Misrepresenting Material Aspects

60. In numerous instances, in connection with the telemarketing of their purported goods or services, Defendants misrepresent material aspects of the nature or central characteristics of the good or services offered.

61. Defendants' misrepresentations, as alleged in Paragraph 60, constitute deceptive telemarketing acts or practices that violate Section 310.3(a)(2)(iii) of the TSR, 16 C.F.R. §310.3(a)(2)(iii).

COUNT VI – Lack of Express Verifiable Authorization

62. In numerous instances, in connection with the telemarketing of their purported goods or services, Defendants cause billing information to be submitted for payment using a payment method other than a credit card subject to the protections of the Truth in Lending Act, 15 U.S.C. § 1601 *et seq*., and Regulation Z, 12 C.F.R. § 226, or a debit card subject to the protections of the Electronic Fund Transfer Act, 15 U.S.C. § 1693 *et seq*., and Regulation E, 12 C.F.R. § 205, without the consumer's express verifiable authorization.

63. Defendants' failure to obtain express verifiable authorization, as alleged in Paragraph 62, constitutes a deceptive telemarketing act or practice that violates Section 310.3(a)(3) of the TSR, 16 C.F.R. § 310.3(a)(3).

COUNT VII – Lack of Express Informed Consent to Be Billed

64. In numerous instances, in connection with the telemarketing of their purported goods or services, Defendants cause billing in

COUNT IX – Relief Defendants

68. Relief Defendants Trident Consulting and Erikson have received, directly or indirectly, funds, other assets, or both, from Defendants that are traceable to funds obtained from Defendants' customers through the unlawful acts or practices described herein.

69. Relief Defendants are not bona fide purchasers with legal and equitable title to Defendants' customers' funds, or other assets, and Relief Defendants will be unjustly enriched if they are not required to disgorge the funds or the value of the benefit they received as a result of Defendants' unlawful acts or practices.

70. By reason of the foregoing, Relief Defendants hold funds and assets in constructive trust for the benefit of Defendants' customers.

CONSUMER INJURY

71. Consumers have suffered and will continue to suffer substantial 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 acts or practices. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

72. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to

finds necessary to redress injury to consumers resulting from Defendants' violation of the TSR, including rescission and reformation of contracts, and the refund of money.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Federal Trade Commission, pursuant to Section 13(b) and 19 of the FTC Act, 15 U.S.C. § 53(b) and 57b, and Section 6(d) of the Telemarketing Act, 15 U.S.C. § 6105(b), and the Court's own equitable powers, requests that the Court:

1. Award Plaintiff such preliminary injunctive and ancillary relief as may be necessary to avert the likelihood of consumer injury during the pendency of this action and to preserve the possibility of effective final relief, including, bu

Dated: Septemb[illegible] 2014 Respectfully submitted,

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