

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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MAY - 7 2003

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

CLICKFORMAIL.COM, INC., a Texas
corporation also doing business as
ALLPREAPPROVED.COM, and

HARVEY B. VAUGHN, III, individually and
as an officer of CLICKFORMAIL.COM, INC.,

Defendants.

Civ. No.

03C 3033

JUDGE COAR

~~MAGISTRATE JUDGE DOBBINS~~

COMPLAINT FOR PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF

Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), for its Complaint alleges:

1. The FTC brings this action under Sections 5(a) and 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(a) and 53(b), to obtain permanent injunctive relief, rescission or reformation of contracts, restitution, disgorgement, and other equitable relief for defendants' deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

JURISDICTION AND VENUE

2. Subject matter jurisdiction is conferred upon this Court by 15 U.S.C. §§ 45(a), 53(b), and 28 U.S.C. §§ 1331, 1337(a), and 1345.

3. Venue in the United States District Court for the Northern District of Illinois is proper under 15 U.S.C. § 53(b) and 28 U.S.C. §§ 1391(b) and (c).

PLAINTIFF

4. Plaintiff Federal Trade Commission is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58, as amended. The Commission is charged, *inter alia*, with enforcement of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. The Commission is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act, and to secure such equitable relief as may be appropriate in each case, including restitution for injured consumers. 15 U.S.C. § 53(b).

DEFENDANTS

5. Defendant ClickForMail.com, Inc. is a Texas corporation with its registered office at 9202 Cedar Crest Drive, Austin, Texas 78750, and its principal place of business at Suite 369, 9130 Jollyville Road, Austin, Texas 78759. Defendant ClickForMail.com, Inc. also does business as AllPreApproved.com. Defendant ClickForMail.com, Inc. transacts or has transacted business in this district and throughout the United States.

6. Defendant Harvey B. Vaughn, III ("Vaughn"), is the incorporator and an officer and director of defendant ClickForMail.com, Inc. Upon information and belief, defendant Vaughn resides at 9202 Cedar Crest Drive, Austin, Texas 78750. 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 practices set forth in this Complaint. Defendant Vaughn transacts or has transacted business in this district and throughout the United States.

COMMERCE

7. At all times relevant to this Complaint, defendants have maintained a substantial course of trade in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS’ COURSE OF CONDUCT

8. Since at least January 2002, and continuing thereafter, defendants have sent out unsolicited commercial e-mail (spam) in a plan, program, or campaign to market advance-fee credit cards to consumers throughout the United States, many of whom have negative or meager credit histories. Defendants also market their advance-fee credit cards through the use of an Internet web site located at www.allpreapproved.com.

9. Defendants typically solicit unsuspecting consumers by sending spam e-mail messages that state that the recipients have already been approved to receive a credit card. Consumers who read the e-mail messages are told that if they meet a few minimum qualifying criteria, such as live in the United States, have a Social Security number, and are 18 years of age or older, they are “guaranteed” to receive a credit card with a credit limit of up to \$5,000. Defendants’ e-mail messages further state that it does not matter whether the consumers have bad or no credit, low incomes, or discharged bankruptcies.

10. Defendants’ e-mail messages direct consumers to click on a hyperlink that connects them to defendants’ Internet web site located at www.allpreapproved.com. Once there, defendants’ web site makes the same representations contained in defendants’ spam e-mail messages.

11. Consumers who browse defendants’ web site are told that for a one-time “referral

fee” of \$49.95, they are guaranteed to obtain at least one unsecured major credit card, such as a VISA or MasterCard credit card, requiring no security deposits or collateral, with a credit limit of up to \$5,000. Consumers also are told that they will receive an unsecured online store charge card with a credit limit of up to an additional \$5,000 at no extra charge.

12. Defendants’ web site tells consumers that defendants have made “special arrangements” with banks to be able to offer credit cards to consumers. Defendants’ web site also tells consumers that if they do not receive an unsecured VISA or MasterCard credit card, or an online store charge card, they will receive a 200% refund. Defendants state that they are able to make such a “bold guarantee” because they are “experts in the banking business....”

13. In order to obtain their guaranteed unsecured credit cards, consumers must agree to have their checking accounts electronically debited \$49.95. Typically, defendants’ offer of a guaranteed unsecured major credit card for \$49.95 appeals most to consumers with poor or no credit histories and who generally do not receive offers of credit.

14. Consumers who agree to pay defendants’ fee to obtain their guaranteed unsecured credit cards are connected to a secure portion of defendants’ web site. There, defendants’ web site directs consumers to enter personal identifying and checking account information, and to select and enter a username and password. Once consumers have entered the required information, their checking accounts are electronically debited almost immediately by an Internet-based check processor named Web Transaction Services. In many instances, consumers then receive a confirmation page with a heading that reads “Approved! Congratulations! Your membership has been approved!” After consumers have paid defendants’ fee, defendants’ web site directs them to another portion of the web site that requires the consumers to enter the

usernames and passwords previously selected.

15. Consumers who pay defendants' fee believe that they will be issued an unsecured major credit card. Only after paying, however, do consumers learn that defendants are not going to provide consumers with unsecured credit cards. Instead of providing the guaranteed unsecured credit cards consumers were promised, defendants only provide consumers with a web page containing about six to eight hyperlinks to companies that purportedly issue credit cards.

16. Many of the hyperlinks to credit card issuers that defendants provide to consumers are to companies that issue only secured credit cards, stored-value cards, or catalog charge cards. Many of these credit cards require significant application and up-front fees, sometimes as much as \$281 for a credit card with a credit limit of \$300. In some instances, defendants have provided consumers broken or altogether missing links.

17. Only after paying the \$49.95 fee do defendants disclose to consumers that to take advantage of defendants' 200% guarantee, consumers must apply to and be denied by every credit card issuer provided. Because many of the hyperlinks provided by defendants are to companies that issue only secured credit cards, stored-value cards, or catalog charge cards, it nearly is impossible for a consumer to be denied by every credit card issuer provided.

18. Defendants do not provide consumers with an address or telephone number to which consumers can complain or contact defendants.

19. The only identifying information defendants provide consumers is an e-mail address to support@allpreapproved.com and a fax number. In most instances, defendants do not respond to consumer complaints and e-mail sent to support@allpreapproved.com, and the fax number is not provided to consumers until after consumers have paid defendants' fee.

20. Defendants do not provide consumers with, or arrange for consumers to receive, credit cards. Consumers generally do not receive either the guaranteed credit card or a refund of 200% of the fees paid to defendants.

VIOLATIONS OF THE FEDERAL TRADE COMMISSION ACT

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

22. Misrepresentations or omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

COUNT I

23. In numerous instances, in connection with the marketing of advance-fee credit cards, defendants have represented, expressly or by implication, that consumers who meet minimum qualifying criteria and pay a fee of \$49.95 will receive an unsecured major credit card, such as a VISA or MasterCard credit card.

24. In truth and in fact, in numerous instances in which defendants have made the representations above, consumers who meet minimum qualifying criteria and pay a fee of \$49.95 do not receive an unsecured major credit card, such as a VISA or MasterCard credit card.

25. Therefore, the representations set forth in Paragraph 23 are false and misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT II

26. In numerous instances, in connection with the marketing of advance-fee credit cards, defendants have represented, expressly or by implication, that defendants have special

arrangements with banks or financial institutions to issue to its customers unsecured major credit cards, such as VISA or MasterCard credit cards.

27. In truth and in fact, in numerous instances in which defendants have made the representations above, defendants do not have special arrangements with banks or financial institutions to issue to its customers unsecured major credit cards, such as VISA or MasterCard credit cards.

28. Therefore, the representations set forth in Paragraph 26 are false and misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

CONSUMER INJURY

29. Consumers throughout the United States have suffered, and continue to suffer, substantial monetary loss as a result of defendants' unlawful acts and practices. In addition, defendants have been unjustly enriched as a result of its unlawful acts and practices. Absent injunctive relief, defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public.

THIS COURT'S POWER TO GRANT RELIEF

30. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and other ancillary relief, including consumer redress, disgorgement and restitution, to prevent and remedy any violations of any provision of law enforced by the Commission.

31. This Court, in the exercise of its equitable jurisdiction, may award other ancillary relief to remedy injury caused by defendants' law violations.

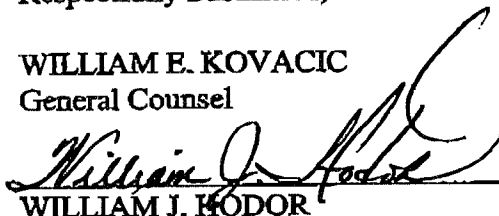
PRAYER FOR RELIEF

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

1. Award the 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;
2. Permanently enjoin defendants from violating the FTC Act as alleged herein;
3. Award such relief as the Court finds necessary to redress injury to consumers resulting from defendants' violations of the FTC Act, including but not limited to, rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies; and
4. Award the 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.

Respectfully Submitted,

WILLIAM E. KOVACIC
General Counsel



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Dated: May 7, 2003