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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

FEDERAL TRADE COMMISSION AND STATE OF ILLINOIS, Plaintiffs, v. MEMBERSHIP SERVICES, INC., a Delaware corporation, and JAMES M. SCHWINDT, individually and as an officer of Membership Services, Inc., Defendants.	'01 CV 1868 JM (POR) Case No. **COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF**

Plaintiffs Federal Trade Commission ("FTC" or "Commission") and State of Illinois ("Illinois") for their Complaint allege:

1. The FTC brings this action under Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C.

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§§ 53(b) and 57b, and the Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing Act"), 15 U.S.C. §§ 6101 *et seq.*, to obtain permanent injunctive relief, rescission 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), and the FTC's Trade Regulation Rule entitled "Telemarketing Sales Rule," 16 C.F.R. Part 310.

2. Illinois brings this action under Section 4(a) of the Telemarketing Act, 15 U.S.C. § 6103(a), and under Sections 7 and 10 of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/7 and 505/10 ("Consumer Fraud Act"), and Attorney General James Ryan's authority to represent Illinois, to obtain permanent injunctive relief, restitution, damages, civil penalties, costs, and other equitable relief for defendants' deceptive acts or practices in violation of Section 2 of the Consumer Fraud Act, 815 ILCS 505/2, and the FTC's Trade Regulation Rule entitled "Telemarketing Sales Rule," 16 C.F.R. Part 310.

JURISDICTION AND VENUE

3. Subject matter jurisdiction is conferred upon this Court by 15 U.S.C. §§ 45(a), 53(b), 57b, 6102(c), 6103(a), and 6105(b) and 28 U.S.C. §§ 1331, 1337(a), and 1345, and supplemental jurisdiction over state claims by 28 U.S.C. § 1367.

4. Venue in the Southern District of California is proper under 15 U.S.C. §§ 53(b) and 6103(a) and 28 U.S.C. § 1391(b), (c), and (d).

PLAINTIFFS

5. The Federal Trade Commission is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41 *et seq.* The Commission enforces 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 also enforces the Telemarketing Sales Rule ("TSR" or "the Rule"), 16 C.F.R. Part 310, which prohibits deceptive or abusive telemarketing practices. The Commission may 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 restitution for injured consumers. 15 U.S.C. §§ 53(b), 57b, and 6105(b).

6. The State of Illinois is one of the fifty sovereign states of the United States. The State of Illinois, as parens patriae, by and through its attorney James Ryan, Attorney General of Illinois, is authorized to initiate federal district court proceedings to seek to enjoin telemarketing practices that violate the Commission's Telemarketing Sales Rule, and, in each such case, to obtain damages, restitution, and other compensation on behalf of residents of the State of Illinois and to obtain such further and other relief as the court may find appropriate. 15 U.S.C. § 6103(a). The State of Illinois is also authorized to enjoin violations of the Consumer Fraud Act, 815 ILCS 505/1 *et seq.*, and to obtain restitution, civil penalties, costs, and such other relief as the Court may find appropriate.

DEFENDANTS

7. Defendant Membership Services, Inc. ("MSI"), is a Delaware corporation, with its offices and principal place of business located at 7841 Balboa Avenue, #106, San Diego, California. MSI transacts or has transacted business in the Southern District of California.

8. Defendant James M. Schwindt ("Schwindt") is the president and owner of MSI. 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. He resides and transacts business in the Southern District of California.

COMMERCE

9. At all times relevant to this complaint, defendants have maintained a substantial course of business in the offering for sale and sale, through telemarketing, of credit card protection products or services and low-interest credit cards, in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

10. Defendants were at all times relevant hereto, engaged in trade and commerce in the State of Illinois within the meaning of Subsection 1(f) of the Consumer Fraud Act, 815 ILCS 505/1(f), in that defendants advertised and offered for sale to Illinois consumers, among others, defendants' purported credit card protection products or services and low-interest credit cards.

DEFENDANTS' BUSINESS PRACTICES

11. Since at least May 2000, defendants, using the name Membership Services or MSI, have made unsolicited telephone calls

to consumers throughout the United States. In some instances they have represented, either expressly or by implication, that they are calling on behalf of the consumer’s credit card issuer. A high percentage of persons solicited by defendants are elderly.

12. Defendants have told consumers that it is easy for others to obtain consumers’ credit card numbers via the Internet and other technology. They have told consumers that persons use the stolen credit card numbers to purchased goods and services, often running up hundreds or even thousands of dollars in credit card account charges.

13. Defendants have represented that, if a consumer’s credit card number is stolen or misappropriated, the consumer can be held liable for all unauthorized charges, regardless of amount, made to the consumer’s credit card account. Defendants have told consumers that they should purchase defendants’ credit card protection service because consumers are not currently protected against unauthorized use of their credit card accounts by such criminals.

14. Defendants have represented that the purchase of their credit card protection service protects consumers from liability for unauthorized credit card charges. In some instances, defendants have claimed that consumers’ credit card companies or certain laws require consumers to purchase credit card protection services.

15. In addition, in numerous instances, defendants, directly or through their telephone sales agents, have telephoned consumers and told them that in exchange for an advance fee, they were guaranteed or highly likely to receive a Visa or MasterCard

credit card with a low interest rate.

16. Defendants have not told consumers that in order to obtain the low-interest credit cards, consumers must apply to a credit card issuer and meet that lender's credit-granting criteria.

17. Those consumers who paid advance fees to defendants did not receive a credit card from defendants. Some received a booklet of general credit information and a list of banks that offer low-interest credit cards. Others received a package of coupons. Defendants have not provided the promised low-interest credit card to consumers.

18. Defendants have persuaded consumers to divulge their credit card numbers by various means, including but not limited to, requesting consumers to provide their credit card numbers for "verification purposes," or "to validate their credit cards," or by reciting one or more of the numbers of consumers' credit card accounts and then directing consumers to disclose the remaining numbers of the consumers' credit card accounts.

Defendants have obtained consumers' credit card account numbers and, without consumers' authorization, have caused charges to be posted to those accounts.

19. Defendants have charged consumers fees of $299 or more for their products or services.

20. Despite defendants' representations in numerous instances that the cost of the credit card protection service will be charged in small monthly installments to consumers' credit card accounts, defendants impose the full cost immediately.

SECTION 5 OF THE FTC ACT

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

VIOLATIONS OF SECTION 5 OF THE FTC ACT

COUNT I

(By Plaintiff Federal Trade Commission)

Credit Card Protection

22. In numerous instances, in connection with the offering of credit card protection services to consumers, or in the course of billing, attempting to collect, or collecting money from consumers, defendants have made various representations, expressly or by implication, including but not limited to the following:

a. Defendants are affiliated with, or are calling from or on behalf of, consumers’ credit card issuers;

b. If consumers do not purchase defendants' services, consumers will be held fully liable for all unauthorized charges made to their credit card accounts;

c. Consumers are now or will soon be required to purchase credit card protection;

d. Consumers have given authorization for their credit card accounts to be charged for defendants' goods or services; or

e. Defendants will charge consumers a small amount per month on their credit card for defendants’ services until the entire amount is paid.

23. In truth and in fact:

a. Defendants are not affiliated with, or calling from or on behalf of, consumers' credit card issuers;

b. Under Section 226.12(b) of Regulation Z, 12 C.F.R. § 226.12(b), and Section 133 of the Truth in Lending Act, 15 U.S.C. § 1643, consumers cannot be held liable for more than $50 for any unauthorized charges to a credit card account;

c. Consumers are not now and will not soon be required to purchase credit card protection;

d. In numerous instances, consumers have not given authorization for their credit card accounts to be charged for defendants' goods or services; and

e. Defendants do not charge consumers a small amount per month on their credit card for defendants' services until the entire amount is paid, but rather place a charge for the full amount of the cost of defendants' services on consumers' credit card immediately after defendants deem their offer to have been accepted.

24. Therefore, defendants' representations, as set forth in paragraph 22, 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

(By Plaintiff Federal Trade Commission)

Advance-Fee Credit Cards

25. In numerous instances, in connection with offers to obtain or arrange for the issuance of low-interest credit cards for consumers, or in the course of billing, attempting to collect, or collecting money from consumers, defendants have made various representations, expressly or by implication, including but not limited to the following:

a. Defendants are affiliated with, or are calling from or on behalf of, consumers’ credit card issuers;

b. After paying defendants a fee, consumers will or are highly likely to receive a low-interest Visa or MasterCard credit card; or

c. Consumers have given authorization for their credit card accounts to be charged for defendants' goods or services.

26. In truth and in fact:

a. Defendants are not affiliated with, or calling from or on behalf of, consumers’ credit card issuers;

b. After paying defendants a fee, consumers will not or are not highly likely to receive a low-interest Visa or MasterCard credit card; and

c. In numerous instances, consumers have not given authorization for their credit card accounts to be charged for defendants' goods or services.

27. Therefore, defendants' representations, as set forth in paragraph 25, 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 III

(By Plaintiff Federal Trade Commission)

Unauthorized Billing

28. In numerous instances, defendants cause consumers' credit card accounts to be charged for defendants' goods or services without having previously obtained consumers' authorization for such charges. Many such consumers have never been advised that their credit card accounts would be charged, or have advised defendants that they did not agree to purchase the defendants' goods or services. Therefore, consumers cannot reasonably avoid the defendants' billing for these goods or services.

29. Defendants' practice of charging consumers' credit card accounts without authorization causes substantial injury to consumers that is not outweighed by countervailing benefits to consumers or competition.

30. Therefore, defendants' practice, as outline above, is unfair and violates Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

THE FTC'S TELEMARKETING SALES RULE

31. In the Telemarketing Act, 15 U.S.C. §§ 6101, *et seq.*, Congress directed the Commission to prescribe rules prohibiting deceptive and abusive telemarketing acts or practices. On August 16, 1995, the Commission promulgated the TSR, 16 C.F.R.

Part 310. The TSR became effective on December 31, 1995.

32. Defendants are "sellers" or "telemarketers" engaged in "telemarketing," as those terms are defined in the TSR, 16 C.F.R. §§ 310.2(r), (t), and (u).

33. The Rule prohibits telemarketers and sellers from misrepresenting any material aspect of the performance, efficacy, nature, or central characteristics of the goods or services that are the subject of the sales offer. 16 C.F.R. § 310.3(a)(2)(iii).

34. The TSR prohibits telemarketers and sellers from, among other things, requesting or receiving payment of any fee or consideration in advance of obtaining or arranging a loan or other extension of credit when the seller or telemarketer has guaranteed or represented a high likelihood of success in obtaining or arranging a loan or other extension of credit. 16 C.F.R. § 310.4(a)(4).

35. The TSR prohibits telemarketers and sellers from "making a false or misleading statement to induce any person to pay for goods or services." 16 C.F.R. § 310.3(a)(4).

36. 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), violations of the TSR constitute unfair or deceptive acts or practices in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

VIOLATIONS OF THE TELEMARKETING SALES RULE

COUNT IV

(By Plaintiffs Federal Trade Commission and State of Illinois)

Credit Card Protection

37. In numerous instances, in connection with the

telemarketing of credit card protection services to consumers, defendants have represented, directly or by implication, that if consumers do not purchase defendants' services, consumers will be held fully liable for any unauthorized charges made to their credit card accounts.

38. In truth and in fact, under Section 226.12(b) of Regulation Z, 12 C.F.R. § 226.12(b), and Section 133 of the Truth in Lending Act, 15 U.S.C. § 1643, a consumer cannot be held liable for more than $50 for any unauthorized charges to a credit card account.

39. Therefore, defendants' representations, as alleged in Paragraph 37, are deceptive telemarketing acts or practices in violation of Section 310.3(a)(2)(iii) of the Telemarketing Sales Rule, 16 C.F.R. § 310.3(a)(2)(iii).

COUNT V

(By Plaintiffs Federal Trade Commission and State of Illinois)

Credit Card Protection

40. In numerous instances, in connection with the telemarketing of credit card protection services to consumers, or in the course of billing, attempting to collect, or collecting money from consumers, defendants have represented, directly or by implication, that:

a. Defendants are affiliated with, or are calling from or on behalf of, consumers' credit card issuers;

b. Consumers are now or soon will be required to purchase credit card protection;

c. Consumers have given authorization for their credit card accounts to be charged for defendants' goods or services; or

d. Defendants will charge consumers a small amount per month on their credit card for defendants' services until the entire amount is paid.

41. In truth and in fact:

a. Defendants are not affiliated with, or calling from or on behalf of, the consumer's credit card issuer;

b. Consumers are not now and will not soon be required to purchase credit card protection;

c. In numerous instances, consumers have not given authorization for their credit card accounts to be charged for defendants' goods or services; and

d. Defendants do not charge consumers a small amount per month on their credit card for defendants' services until the entire amount is paid, but rather place a charge for the full amount of the cost of defendants' services on consumers' credit card immediately after defendants deem their offer to have been accepted.

42. Therefore, defendants' representations, as alleged in Paragraph 40, constitute false or misleading statements to induce a person to pay for goods or services, and are deceptive telemarketing acts or practices in violation of Section 310.3(a)(4) of the Rule, 16 C.F.R. § 310.3(a)(4).

COUNT VI

(By Plaintiffs Federal Trade Commission and State of Illinois)

Advance-Fee Credit Cards

43. In numerous instances, in connection with telemarketing offers to obtain or arrange for the issuance of low-interest credit cards for consumers, defendants have requested or received payment of a fee or consideration in advance of consumers obtaining a credit card when defendants have guaranteed or represented a high likelihood of success in obtaining a credit card for such consumers.

44. Defendants have thereby violated Section 310.4(a)(4) of the Telemarketing Sales Rule, 16 C.F.R. § 310.4(a)(4).

COUNT VII

(By Plaintiffs Federal Trade Commission and State of Illinois)

Advance-Fee Credit Cards

45. In numerous instances, in connection with telemarketing offers to obtain or arrange for the issuance of low-interest credit cards for consumers, defendants have represented, directly or by implication, that after paying defendants a fee, consumers will or are highly likely to receive a low-interest Visa or MasterCard credit card.

46. In truth and in fact, after paying defendants a fee, most consumers do not or are not highly likely to receive a low-interest Visa or MasterCard credit card.

47. Therefore, defendants' representations, as alleged in Paragraph 45, are deceptive telemarketing acts or practices in violation of Section 310.3(a)(2)(iii) of the Telemarketing Sales Rule, 16 C.F.R. § 310.3(a)(2)(iii).

COUNT VIII

(By Plaintiffs Federal Trade Commission and State of Illinois)

Advance-Fee Credit Cards

48. In numerous instances, in connection with telemarketing offers to obtain or arrange for the issuance of low-interest credit cards for consumers, or in the course of billing, attempting to collect, or collecting money from consumers, defendants have represented, directly or by implication, that:

a. Defendants are affiliated with, or are calling from or on behalf of, consumers' credit card issuers; or

b. Consumers have given authorization for their credit card accounts to be charged for defendants' goods or services.

49. In truth and in fact:

a. Defendants are not affiliated with, or calling from or on behalf of, the consumer's credit card issuer; and

b. In numerous instances, consumers have not given authorization for their credit card accounts to be charged for defendants' goods or services.

50. Therefore, defendants' representations, as alleged in Paragraph 48, constitute false or misleading statements to induce a person to pay for goods or services, and are deceptive telemarketing acts or practices in violation of Section 310.3(a)(4) of the Rule, 16 C.F.R. § 310.3(a)(4).

THE ILLINOIS CONSUMER FRAUD AND DECEPTIVE BUSINESS PRACTICES ACT

51. Section 2 of the Consumer Fraud Act, 815 ILCS 505/2, provides:

> Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practice described in section 2 of the "Uniform Deceptive Trade Practices Act", approved August 5, 1965, in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby. In construing this section consideration shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to section 5(a) of the Federal Trade Commission Act.

VIOLATIONS OF THE CONSUMER FRAUD ACT

COUNT IX

(By Plaintiff State of Illinois)

52. Defendants have violated Section 2 of the Consumer Fraud Act, 815 ILCS 505/2, by engaging in the following acts or practices in the course of telemarketing credit card protection services or low-interest credit cards, or in the course of billing consumers for those goods or services:

a. representing, expressly or by implication, to consumers, including Illinois consumers, that defendants are affiliated with, or are calling from, or on behalf of, consumers' credit card issuers, when in fact, defendants are not affiliated with, or calling from, or on behalf of, consumers’ credit card issuers;

b. representing, expressly or by implication, to consumers, including Illinois consumers, that consumers will be held fully liable for all unauthorized charges made to their credit card accounts, when in fact, under Section 226.12(b) of Regulation Z, 12 C.F.R. § 226.12(b), and Section 133 of the Truth in Lending Act, 15 U.S.C. § 1643, consumers cannot be held liable for more than $50 for any unauthorized charges submitted to a credit card account;

c. representing, expressly or by implication, to consumers, including Illinois consumers, that consumers are now or will soon be required to purchase credit card protection, when in fact, consumers are not now nor soon will be required to purchase credit card protection;

d. representing, expressly or by implication, to consumers, including Illinois consumers, that after paying defendants a fee, consumers will receive a low-interest Visa or MasterCard credit card;

e. representing, expressly or by implication, to consumers, including Illinois consumers, that consumers have given authorization for their credit card accounts to be charged for defendants' goods or services, and therefore owe money to defendants, when in fact, in numerous instances consumers have not given authorization for their credit card accounts to be charged for defendants' goods or services, and therefore do not owe money to defendants; or

f. representing, expressly or by implication, to consumers, including Illinois consumers, that defendants will charge consumers a small amount per month on their credit card for defendants' services until the entire amount is paid, when in fact, defendants do not charge consumers a small amount per month on their credit card for defendants' services until the entire amount is paid, but rather place a charge for the full amount of the cost of defendants' services on consumers' credit card immediately after defendants deem their offer to have been accepted.

CONSUMER INJURY

53. Consumers throughout the United States have suffered substantial monetary loss as a result of defendants' 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

54. 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.

55. Section 19 of the FTC Act, 15 U.S.C. § 57b, and Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b), authorize this Court to issue a permanent injunction and grant such relief as the Court finds appropriate to halt and redress injury resulting from defendants' violations of the TSR, including the rescission and reformation of contracts, and the refund of money.

56. Section 4(a) of the Telemarketing Act, 15 U.S.C. § 6103(a), authorizes the Court to grant to the State of Illinois, on behalf of its residents, injunctive and other relief, including damages, restitution, other compensation, and such further and other relief as the Court finds appropriate.

57. The Consumer Fraud Act, 815 ILCS 505/1 *et seq.*, may be enforced through this Court through pendent jurisdiction pursuant to 28 U.S.C. § 1367. Sections 7 and 10 of the Consumer Fraud Act, 815 ILCS 505/7 and 505/10 empower this Court to grant injunctive and such other relief as it may find appropriate to halt and redress violations of the Consumer Fraud Act, including restitution, civil penalties, and costs.

58. 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 Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, and Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b), and the Court's own equitable powers, and plaintiff State of Illinois pursuant to Section 4(a) of the Telemarketing Act, 15 U.S.C. § 6103(a), pendent jurisdiction pursuant to 28

U.S.C.§ 1367, and the Court’s own equitable powers, request that the Court:

1. Award plaintiffs such temporary and 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 and the TSR as alleged herein;

3. Permanently enjoin defendants from violating the Consumer Fraud Act;

4. Award such relief as the Court finds necessary to redress injury to consumers resulting from defendants’ violations of the FTC Act, the TSR, and the Consumer Fraud Act, including, but not limited to, rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies;

5. Assess a civil penalty in the amount of Fifty Thousand Dollars ($50,000) per violation of the Consumer Fraud Act found by the Court to have been committed by defendants with the intent to defraud; if the Court finds defendants have engaged in methods, acts, or practices declared unlawful by the Consumer Fraud Act without the intent to defraud, then assessing a statutory civil penalty of Fifty Thousand Dollars ($50,000), all as provided in Section 7(b) of the Consumer Fraud Act, 815 ILCS 505/7(b);

6. Assess an additional civil penalty, not to exceed Ten Thousand Dollars ($10,000), per violation of the Consumer Fraud Act found by the Court to have been committed by defendants

against a person 65 years of age or older, as provided in Section 7(c) of the Consumer Fraud Act, 815 ILCS 505/7(c); and

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

Dated October 15, 2001

Respectfully submitted,

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