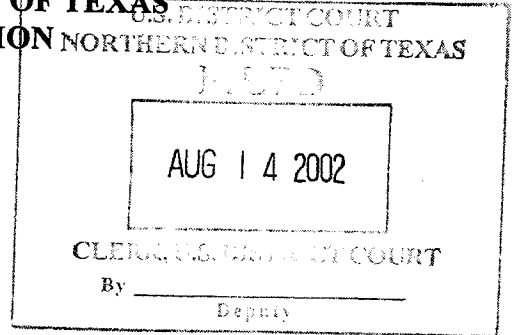


UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION



FEDERAL TRADE COMMISSION,

Plaintiff,

v.

BRENT CHIVERS,
doing business as Credit Card Services
and Destyni Enterprises,

Defendant.

Civil Action No.

3-02CV1727-G

**COMPLAINT FOR PERMANENT INJUNCTION AND
OTHER EQUITABLE RELIEF**

Plaintiff, the Federal Trade Commission (“FTC” or “the Commission”) for its complaint against Brent Chivers, (“defendant”), 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. §§ 6101-6108, to secure preliminary and permanent injunctive relief, restitution, rescission or reformation of contracts, disgorgement, and other equitable relief for defendant’s 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” (the “Telemarketing Sales Rule”),

16 C.F.R. Part 310.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction pursuant to 15 U.S.C. §§ 45(a), 53(b), 57b, 6102(c), and 6105(b), and 28 U.S.C. §§ 1331, 1337(a), and 1345.

3. Venue in the Northern District of Texas is proper under 15 U.S.C. § 53(b).

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 also enforces the Telemarketing Sales Rule, 16 C.F.R. Part 310, which prohibits deceptive or abusive telemarketing acts or practices. The Commission is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act and the Telemarketing Sales Rule, 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, 6102(c), and 6105(b).

DEFENDANT

5. Defendant Brent Chivers is an individual doing business as Credit Card Services and Destyni Enterprises. 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 of set forth in this complaint. He transacts or has transacted business in the

Northern District of Texas.

COMMERCE

6. At all times relevant to this complaint, defendant has 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.

DEFENDANT’S COURSE OF CONDUCT

7. Since at least August, 2001, defendant, acting directly or through his employees and agents, has solicited consumers throughout the country and falsely promised to provide credit cards to consumers in exchange for an advance fee of \$79.00.

8. Defendant “cold calls” consumers offering to provide them an unsecured major credit card, such as a Visa or MasterCard, with absolutely no security deposit, regardless of their credit history. Defendant represents to consumers that they are pre-approved for a credit card and assures them that if they pay the required fee, they will receive the credit card.

9. In connection with taking applications over the telephone, defendant persuades consumers to divulge their checking account information, including their name as it appears on the account and the account number.

10. Defendant routinely debits the bank accounts of consumers, in advance of providing those consumers with the VISA or MasterCard credit cards promised during the telephone calls.

11. After debiting the funds from consumers’ bank accounts, defendant does not

provide consumers with the promised VISA or MasterCard credit cards.

12. At best, in some instances, defendant provides consumers with an application for a major credit card from a separate financial institution.

13. Only then do consumers understand that they are not yet approved to receive a credit card, and they will have to complete an additional application which must be screened by a bank based on the bank's own credit criteria, and may have to pay additional fees to that bank if they are ultimately approved to receive a credit card.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

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

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

COUNT ONE

16. In numerous instances, in connection with the telemarketing of advance fee credit cards, defendant or his employees or agents have represented, expressly or by implication, that after paying defendant a fee, consumers will, or are highly likely to, receive an unsecured major credit card, such as a VISA or MasterCard credit card.

17. In truth and in fact, in numerous instances, after paying defendant a fee, consumers do not receive an unsecured major credit card, such as a VISA or MasterCard credit card.

18. Therefore, the representation set forth in Paragraph 16 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).

THE FTC'S TELEMARKETING SALES RULE

19. The Commission promulgated the Telemarketing Sales Rule pursuant to Section 6102(a) of the Telemarketing Act, 15 U.S.C. § 6102(a). The Rule became effective on December 31, 1995.

20. The FTC Telemarketing Sales Rule prohibits telemarketers and sellers from misrepresenting 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).

21. The Telemarketing Sales Rule also 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).

22. 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 Telemarketing Sales Rule 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).

23. Defendant is a "seller" or "telemarketer" engaged in "telemarketing," as those

terms are defined in the FTC Telemarketing Sales Rule. 16 C.F.R. §§ 310.2(r), (t) & (u).

VIOLATIONS OF THE TELEMARKETING SALES RULE

COUNT TWO

24. In numerous instances, in connection with the telemarketing of advance fee credit cards, defendant or his employees or agents have misrepresented, directly or by implication, that after paying defendant a fee, consumers will, or are highly likely to, receive an unsecured major credit card, such as a VISA or MasterCard credit card.

25. Defendant has thereby violated Section 310.3(a)(2)(iii) of the Telemarketing Sales Rule, 16 C.F.R. § 310.3(a)(2)(iii).

COUNT THREE

26. In numerous instances, in connection with the telemarketing of advance fee credit cards, defendant or his employees or agents have requested and received payment of a fee in advance of consumers obtaining a credit card when defendant has guaranteed or represented a high likelihood of success in obtaining or arranging for the acquisition of an unsecured credit card, such as a VISA or MasterCard credit card, for such consumers.

27. Defendant has thereby violated Section 310.4(a)(4) of the Telemarketing Sales Rule, 16 C.F.R. § 310.4(a)(4).

CONSUMER INJURY

28. Consumers throughout the United States have suffered, and continue to suffer, substantial monetary loss as a result of defendant's unlawful acts and practices. In addition, defendant has been unjustly enriched as a result of his unlawful acts and practices. Absent

injunctive relief, defendant is likely to continue to injure consumers, reap unjust enrichment, and harm the public.

THIS COURT'S POWER TO GRANT RELIEF

29. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), authorizes this Court to issue a permanent injunction against defendant's violations of the FTC Act and, in the exercise of its equitable jurisdiction, to order such ancillary relief as temporary and preliminary injunctions, consumer redress, rescission, restitution and disgorgement of profits resulting from defendant's unlawful acts or practices, and other remedial measures.

30. 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 the Court to grant to the FTC such relief as the Court finds necessary to redress injury to consumers or other persons resulting from defendant's violations of the Telemarketing Sales Rule, including the rescission and reformation of contracts and the refund of money.

PRAAYER 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, Section 6(b) 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 but not limited to, temporary and preliminary injunctions, appointment of a receiver, and an order freezing assets;

2. Permanently enjoin defendant from violating the FTC Act and the Telemarketing Sales Rule, as alleged herein;

3. Award such relief as the Court finds necessary to redress injury to consumers resulting from defendant's violations of the FTC Act and the Telemarketing Sales Rule, including, but not limited to, rescission or reformation of contracts, restitution, refund of monies paid, and disgorgement of ill-gotten monies; and

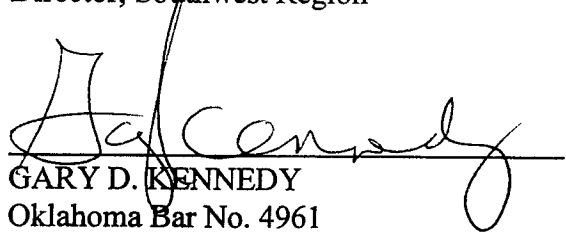
4. Award plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

Dated: August 14, 2002

Respectfully Submitted,

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