

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

FILED BY _____ D.C.
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CLERK OF COURT
JUDGE WADDOX
U.S. DIST. CT.
S.D. OF FL. - MIAMI

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

PREMIER FINANCIAL SERVICES
INTERNATIONAL, INC.,
a Florida corporation;

PREMIER FINANCIAL SERVICES OF
TENNESSEE, INC.,
a Tennessee corporation

FIRST FINANCIAL DEBT CONSOLIDATION INC.,
a Florida corporation

SCOTT JASON KADUK, individually and as an officer
of Premier Financial Services International, Inc.;
Premier Financial Services of Tennessee, Inc. and
First Financial Debt Consolidation Inc.

Defendants.

02-61134

Civ. No.

CIV-MOORE

MAGISTRATE JUDGE
O'SULLIVAN

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

Plaintiff, the Federal Trade Commission ("FTC" or "the Commission") for its
complaint against PREMIER FINANCIAL SERVICES INTERNATIONAL, INC.;
PREMIER FINANCIAL SERVICES OF TENNESSEE, INC.; FIRST FINANCIAL DEBT
CONSOLIDATION INC.; and SCOTT JASON KADUK (collectively, "Defendants"),

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 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” (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 Southern District of Florida 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 *et seq.* 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).

DEFENDANTS

5. Defendant Scott Jason Kaduk (hereinafter “Kaduk”) is the President, or has held himself out as the President of Premier Financial Services International, Inc.; Premier Financial Services of Tennessee, Inc.; and First Financial Debt Consolidation Inc. 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 Premier Financial Services International, Inc., Premier Financial Services of Tennessee, Inc. and of First Financial Debt Consolidation Inc. He transacts or has transacted business in the Southern District of Florida.

6. Defendant Premier Financial Services International, Inc. (hereinafter “Premier International”) is a Florida corporation, with its principal place of business at 2409 University Drive, Coral Springs, Florida 33065. Premier transacts or has transacted business in the Southern District of Florida.

7. Defendant Premier Financial Services of Tennessee (hereinafter “Premier of Tennessee”) is a Tennessee corporation, with its principal place of business at 2720 Old Lebanon Road, Suite 107, Nashville, Tennessee 37214. Premier of Tennessee transacts or has transacted business in the Southern District of Florida.

8. Defendant First Financial Debt Consolidation Inc. (hereinafter “First

Financial”) was a Florida corporation, with its principal place of business at 4201 N. Dixie Highway, Oakland Park, Florida 33334. First Financial had additional offices at 2525 Perimeter Place Dr., Suite 113, Nashville, Tennessee 37214 and 211 Donelson Pike, Suite 4, Nashville, Tennessee 37214. On September 21, 2001, First Financial was administratively dissolved by the State of Florida for First Financial’s failure to file an annual report. First Financial has transacted business in the Southern District of Florida.

COMMERCE

9. 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

10. Since 2000, Defendants Kaduk, Premier International, Premier of Tennessee and First Financial, acting directly or through their employees and agents, have solicited consumers throughout the country and falsely promised to provide credit cards to consumers in exchange for an advance fee, frequently ranging between \$189.00 and \$ 229.95.

11. Defendants contact the consumers by telephone and tell them that they are pre-approved for a major credit card, such as a VISA or MasterCard. Defendants assure the consumers that if they pay the required one-time fee, they will receive the credit card. Defendants also offer to provide some consumers other purported benefits, such as hotel discounts and grocery coupons.

12. In connection with obtaining the credit card, Defendants persuade consumers

to divulge their banking account information, including their name and the account number.

13. Defendants routinely debit the bank accounts of consumers, in advance of providing those consumers with the promised major credit cards, such as the VISA or MasterCard.

14. After deducting the fee from the consumers' checking accounts, Defendants send the consumers a package. In numerous instances, the package contains a hotel discount card, grocery coupons or other discount coupons. In addition, the packages contain a letter from the Defendants stating that the consumer's name has been sent to the participating banks. In other instances, consumers receive a "signature application form" for consumers to complete. This form is purportedly to be distributed to separate financial institutions who will be providing the major credit cards.

15. Only when they receive the package do consumers understand that they (1) are not yet approved to receive a credit card; (2) will need to be screened by a bank based on the bank's own credit criteria, or (3) may have to pay additional fees to that bank if they are ultimately approved to receive a credit card.

16. After debiting the funds from consumers' bank accounts, Defendants do not provide consumers with the promised VISA or MasterCard credit cards.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

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

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

COUNT ONE

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

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

21. Therefore, the representation set forth in Paragraph 19 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

22. 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.

23. 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).

24. 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).

25. 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).

26. Defendants are “sellers” or “telemarketers” 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

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

28. Defendants have thereby violated Section 310.3(a)(2)(iii) of the Telemarketing Sales Rule, 16 C.F.R. § 310.3(a)(2)(iii).

COUNT THREE

29. In numerous instances, in connection with the telemarketing of advance fee credit cards, Defendants or their employees or agents have requested and received payment of a fee in advance of consumers obtaining a credit card when Defendants have 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.

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

CONSUMER INJURY

31. 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 their 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

32. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), authorizes this Court to issue a permanent injunction against Defendants' 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 Defendants' unlawful acts or practices, and other remedial measures.

33. 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 Defendants' violations of the Telemarketing Sales Rule, including the rescission and reformation of contracts and the refund of money.

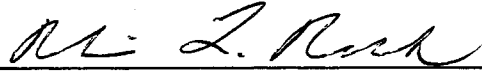
PRAYER FOR RELIEF

WHEREFORE, Plaintiff Federal Trade Commission, pursuant to Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, 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 Defendants 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 Defendants' 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: _____

Respectfully Submitted,
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