

RECEIVED

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

SEP 30 2002

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

FEDERAL TRADE COMMISSION, )

Plaintiff, )

v. )

Civil Action No.

02C 6985

WORLD MEDIA BROKERS INC., a/k/a 913062 )

ONTARIO INC., a Canadian corporation, )

1165107 ONTARIO INC., a Canadian corporation, also )

d/b/a Canadian Catalogue, Canadian Catalogue )

Services, CCS, and Interwin Marketing, )

FABY GAMES INC., a/k/a 1106759 ONTARIO INC., )

a Canadian corporation, also d/b/a Canadian )

Catalogue Services and CCS, )

624654 ONTARIO LIMITED, a Canadian corporation, )

also d/b/a Express Sales, Express Marketing )

Services, EMS and First Telegroup Marketing, )

637736 ONTARIO LIMITED, a Canadian corporation, )

also d/b/a Express Marketing Services and EMS, )

537721 ONTARIO INC., a Canadian corporation, also )

d/b/a Canadian Express Club, )

EXPRESS MARKETING SERVICES LTD., a Canadian )

corporation, also d/b/a EMS, )

CASH & PRIZES, INC., a New York corporation, )

INTERMARKETING SERVICES, INC., a New York )

corporation, )

GEORGE YEMEC, individually and as an officer of the )

corporate defendants, )

ANITA RAPP, individually and as an officer of the )

corporate defendants, )

STEVEN RAPP, individually, as an officer of the )

corporate defendants, )

PAUL TESKEY, individually and as an officer of the )

corporate defendants, )

JEAN-PAUL TESKEY, individually and as an officer of )

the corporate defendants, and )

DEAN TEMPLE, individually and as an officer of the )

corporate defendants, )

Defendants. )

JUDGE AMY ST. EVE

MAGISTRATE JUDGE SCHENKLE

COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF

Plaintiff, the Federal Trade Commission (“FTC” or “the Commission”), for its Complaint alleges as follows:

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 *et seq.*, to secure temporary, preliminary, and permanent injunctive relief, restitution, rescission 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,” 16 C.F.R. Part 310.

#### **JURISDICTION AND VENUE**

1. 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.
2. 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), (c), and (d).

#### **PLAINTIFF**

3. Plaintiff, 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 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, in order to secure such equitable relief as may be appropriate in each case, and to obtain consumer redress. 15 U.S.C. §§ 53(b), 57b, and 6105(b).

### DEFENDANTS

4. Defendants are seven affiliated Canadian corporations and two U.S. corporations under common ownership and their six principal officers (collectively “Defendants”). Since at least 1987, Defendants have operated a telemarketing enterprise that sells foreign lottery tickets and interests in foreign lottery tickets to United States consumers.

5. Defendant **World Media Brokers, Inc.** was incorporated as **913062 Ontario Inc.**, in Ontario, Canada in 1990. Its offices and principal places of business are located at 184 Pearl Street, Suite 200, Toronto, Ontario, M5H 1L5, 50 Widmer Street, Toronto, Ontario, M5V 2E9, and 212 King St. W., Suite #600, Toronto, ON, M5H 1K5.

6. Defendant **1165107 Ontario Inc.** was incorporated in Ontario, Canada in 1996. Its offices and principal places of business are located at 50 Widmer Street, Toronto, Ontario, M5V 2E9, Canada. 1165107 Ontario Inc. has registered the business name of Canadian Catalogue upon incorporation, and also does business as Canadian Catalogue Services, CCS and Interwin Marketing.

7. Defendant **Faby Games Inc.** was incorporated as **1106759 Ontario Inc.** in Ontario, Canada in 1994. Its offices and principal places of business are located at 50 Widmer Street, Toronto, Ontario, M5V 2E9. Faby Games also does business as Canadian Catalogue Services and CCS.

8. Defendant **624654 Ontario Limited** was incorporated in Ontario, Canada, in 1985. Its offices and principal places of business are located at 50 Widmer Street, Toronto, Ontario, M5V 2E9 and 184 Pearl Street, Suite 200, Toronto, Ontario, M5H 1L5. 624654 Ontario Limited has registered the business names of Express Sales, Express Marketing Services, EMS and First TeleGroup Marketing. It also does business as EMS.

9. Defendant **637736 Ontario Limited** was incorporated in Ontario, Canada in 1985, as Sam's Lottery Agency Limited. It formally changed its name to 637736 Ontario Limited in 1992. Its offices and principal places of business are located at 50 Widmer Street, Toronto, Ontario, M5V 2E9 and 184 Pearl St., Suite 200, Toronto, Ontario M5H 1L5. 637736 Ontario Limited has registered the business name Express Marketing Services and also does business as EMS.

10. Defendant **537721 Ontario Inc.** was incorporated in Ontario, Canada in 1983. Its offices and principal places of business are located at 50 Widmer Street, Toronto, Ontario, M5V 2E9 and 212 King Street, Suite #600, Toronto, Ontario, M5H 1K5. 537721 Ontario Inc. also does business as Canadian Express Club.

11. Defendant **Express Marketing Services Ltd.**, was incorporated in Prince Edward Island, Canada, in 1993. Its offices and principal places of business are located at P.O. Box 486, Charlottetown, Prince Edward Island, C1A 7L1 and 5066 Kingsway #202, Burnaby, British Columbia, V5H 2E7. It also does business as EMS.

12. Defendant **Cash & Prizes, Inc.**, was incorporated in New York in 1998. Its offices and principal place of business is 66 W. Broadway, New York, NY 10007.

13. Defendant **Intermarketing Services, Inc.**, was incorporated in New York in 1998. Its offices and principal place of business is 66 W. Broadway, New York, NY 10007.

14. Defendant **George Yemec** is one of the owners and principals of World Media Brokers, Inc., 624654 Ontario Limited, 637736 Ontario Limited, and 537721 Ontario Inc. At all times relevant to this Complaint, acting alone or in concert with others, George Yemec has participated directly in, or has had authority to control the acts and practices of the corporate defendants, including the acts and practices set forth in this Complaint.

15. Defendant **Anita Rapp** is one of the owners and principals of 624654 Ontario Limited and 637736 Ontario Limited. At all times relevant to this Complaint, acting alone or in concert with others, Anita Rapp has participated directly in, or has had authority to control the acts and practices of the corporate defendants, including the acts and practices set forth in this Complaint.

16. Defendant **Steven Rapp** is one of the owners and principals of Express Marketing Services Ltd. At all times relevant to this Complaint, acting alone or in concert with others, Steven Rapp has participated directly in, or has had authority to control the acts and practices of the corporate defendants, including the acts and practices set forth in this Complaint.

17. Defendant **Paul Teskey** is one of the owners and principals of 1165107 Ontario Inc. At all times relevant to this Complaint, acting alone or in concert with others, Paul Teskey has participated directly in, or has had authority to control the acts and practices of the corporate defendants, including the acts and practices set forth in this Complaint.

18. Defendant **Jean-Paul Teskey** is one of the owners and principals of Faby Games Inc. and 1165107 Ontario Inc. At all times relevant to this Complaint, acting alone or in concert

with others, Jean-Paul Teskey has participated directly in, or has had authority to control the acts and practices of the corporate defendants, including the acts and practices set forth in this Complaint.

19. Defendant **Dean Temple** is the owner and principal of Cash & Prizes, Inc. and Intermarketing Services, Inc. At all times relevant to this Complaint, acting alone or in concert with others, Dean Temple has participated directly in, or has had authority to control the acts and practices of the corporate defendants, including the acts and practices set forth in this Complaint.

20. Since at least 1987, Defendants, acting as a common enterprise, directly or through their representatives, have contacted consumers throughout the United States by telephone and mail, in an attempt to sell foreign lottery tickets or interests in foreign lottery tickets to the consumers, or in an attempt to solicit a payment from consumers to secure a monetary award or other prize from a lottery or sweepstakes which the consumer supposedly had “won.”

21. Defendants transact or have transacted business in the Northern District of Illinois.

#### **COMMERCE**

22. 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**

23. Since at least 1987 and continuing thereafter, Defendants have deceptively and illegally telemarketed foreign lottery tickets and interests in foreign lottery tickets to United

States residents, or told consumers that they had won a monetary award or other prize from a lottery or sweepstakes in which the consumer had recently participated, but the consumer would have to make a payment in advance before collecting their winnings. They have targeted the elderly, contacting their victims by telephone and soliciting them to participate in foreign lotteries (e.g., Canadian) by purchasing packages which include lottery tickets and/or interests in lottery tickets. Defendants have solicited consumers to purchase packages that include a combination of individual tickets and group tickets, where the consumers buy shares in a group purchase of lottery tickets and the “winnings” are shared among the group members. The lottery packages sold by Defendants range in price from \$77 to almost \$1,000 each, depending on how many individual plays and group plays are purchased, as well as how many weeks of draws the consumers purchase. The consumers who are told that they have already won a foreign lottery (e.g., Canadian) or sweepstakes are informed that they have to pay several hundred dollars in advance before they collect their winnings.

24. During the telephone solicitations relating to lottery solicitations, Defendants make false and misleading representations to induce consumers to purchase these lottery packages. Among other things, Defendants represent that the consumer has been specially selected to participate in Defendants’ lottery program and that the consumer’s chances of winning a large prize or jackpot are very good by playing with Defendants. Defendants have also related stories of other United States consumers who have played the lottery with Defendants and won. In some instances, Defendants have represented that the consumer’s chances of winning these lotteries are greatly improved by playing with Defendants because Defendants have special methods of selecting the lottery numbers and because consumers will be a part of special group. These

statements are all designed to convince consumers that they are likely to win a large prize or a jackpot in the Canadian or other foreign lottery if they purchase lottery ticket packages from Defendants.

25. During the telephone solicitations, Defendants also fail to disclose that it is illegal for them to sell and for United States consumers to purchase these foreign lottery ticket packages. Further, Defendants explicitly and implicitly tell consumers that it is legal for Defendants to sell and for consumers to purchase the foreign lottery packages. Defendants in many instances falsely tell consumers that they are sponsored by, affiliated with, or working on behalf of the Canadian government to sell the lottery tickets to people residing in the United States.

26. Contrary to Defendants' representations, consumers are not likely to win large prizes or jackpots in the Canadian or other foreign lotteries merely by purchasing lottery packages from Defendants. The odds of winning anything in these foreign lotteries are small. In addition, it is illegal for Defendants to sell foreign lottery tickets or interests in foreign lottery tickets to U.S. consumers and for consumers in the U.S. to purchase the foreign lottery tickets or interests from Defendants. Further, Defendants are not affiliated with the Canadian government and they are not authorized to sell Canadian lottery tickets.

27. Consumers are encouraged to pay Defendants over the telephone by credit card or check draft. After the consumers make their payments, they usually receive a printout in the mail of lottery numbers purportedly purchased for them by Defendants. In many instances, Defendants also send consumers a few instant scratch-off tickets in Canadian national or provincial lotteries. Consumers later receive reports from Defendants showing that they did not win anything in the lottery or they won a very minimal amount. The next contact consumers



receive from Defendants is usually the next time Defendants' telemarketers call to solicit consumers for another purchase.

28. During the telephone solicitations in which Defendants tell consumers that they have won a lottery or sweepstakes in which they participated, Defendants also make several false or misleading statements. For example, in numerous instances, Defendants inform consumers that they have won \$1 million or more in the Canadian lottery or another prize. Defendants tell consumers that they must pay the Defendants several hundred dollars before they can collect their prize, to pay for taxes or other duties. In numerous instances, Defendants have asked consumers for their bank account information, for the purpose of debiting the consumers' accounts for this money.

29. None of the consumers who paid money to the Defendants or had electronic withdrawals made from their accounts by the Defendants received the promised money or prizes.

#### **SECTION 5 OF THE FTC ACT**

30. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), provides that "unfair or deceptive acts or practices in or affecting commerce, are hereby declared unlawful."

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

#### **VIOLATIONS OF SECTION 5 OF THE FTC ACT**

##### **COUNT ONE**

32. In numerous instances, in connection with telemarketing foreign lottery tickets or interests in foreign lottery tickets, Defendants have represented, expressly or by implication, that

the consumer is likely to win a large prize or jackpot in the Canadian lottery or other foreign lottery if the consumer purchases lottery tickets or interests from Defendants.

33. In truth and in fact, the consumer is not likely to win a large prize or jackpot in the Canadian lottery or other foreign lottery if the consumer purchases lottery tickets or interests in lottery tickets from Defendants.

34. Therefore, the representations set forth in Paragraph 32 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 TWO**

35. In numerous instances, in connection with telemarketing foreign lottery tickets or interests in foreign lottery tickets, Defendants have represented, expressly or by implication, that it is legal for Defendants to sell foreign lottery tickets or interests in foreign lottery tickets to consumers in the United States and for consumers in the United States to purchase foreign lottery tickets or interests.

36. In truth and in fact, Defendants have failed to disclose to consumers that the sale and trafficking in foreign lotteries is a violation of federal criminal law.

37. In light of the representations made in Paragraph 35, Defendants' failure to disclose this material fact is deceptive, and violates Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

### **COUNT THREE**

38. In numerous instances, in connection with telemarketing foreign lottery tickets or interests in foreign lottery tickets, Defendants have represented, expressly or by implication, that

it is legal for Defendants to sell foreign lottery tickets or interests in foreign lottery tickets to consumers in the United States and for consumers in the United States to purchase foreign lottery tickets or interests.

39. In truth and in fact, it is not legal for Defendants to sell foreign lottery tickets or interests in foreign lottery tickets to consumers in the United States and for consumers in the United States to purchase foreign lottery tickets or interests.

40. Therefore, the representations set forth in Paragraph 38 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 FOUR**

41. In numerous instances, in connection with the telemarketing of foreign lottery tickets or interests in foreign lottery tickets or sweepstakes, Defendants have represented, expressly or by implication, that consumers would receive a substantial monetary award or other prize.

42. In truth and in fact, in numerous instances, consumers did not receive the promised substantial monetary award or other prize.

43. Therefore, the representations set forth in Paragraph 41 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).

#### **THE FTC TELEMARKETING SALES RULE**

44. In the Telemarketing Act, 15 U.S.C. § 6101 *et seq.*, Congress directed the FTC to prescribe rules prohibiting abusive and deceptive telemarketing acts or practices. On August 16,

1995, the Commission promulgated the Telemarketing Sales Rule, 16 C.F.R. Part 310, with a Statement of Basis and Purpose, 60 Fed. Reg. 43842 (August 23, 1995). The Rule became effective on December 31, 1995.

45. Defendants are “sellers” or “telemarketers” engaged in “telemarketing,” as those terms are defined in the Telemarketing Sales Rule, 16 C.F.R. §§ 310.2(r), (t) and (u).

46. The Telemarketing Sales Rule prohibits sellers and telemarketers “[b]efore a customer pays for goods or services offered, [from] failing to disclose, in a clear and conspicuous manner . . . [a]ll material restrictions, limitations, or conditions to purchase, receive, or use the goods or services that are the subject of the sales offer.” 16 C.F.R. § 310.3(a)(1)(ii).

47. The Telemarketing Sales Rule also prohibits sellers and telemarketers from “[m]aking a false or misleading statement to induce any person to pay for goods or services.” 16 C.F.R. § 310.3(a)(4).

48. 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).

## **VIOLATIONS OF THE FTC TELEMARKETING SALES RULE**

### **COUNT FIVE**

49. In numerous instances, in connection with the telemarketing of foreign lottery tickets or interests in foreign lottery tickets, Defendants have failed to disclose that the sale and trafficking in foreign lotteries is a crime in the United States. Defendants have thereby violated Section 310.3(a)(1)(ii) of the Telemarketing Sales Rule, 16 C.F.R. § 310.3(a)(1)(ii).

## COUNT SIX

50. In numerous instances, in connection with telemarketing foreign lottery tickets or interests in foreign lottery tickets or sweepstakes, Defendants have made false or misleading statements to induce the purchase of the lottery tickets or interests, such as:

- a. the consumer is likely to win a large prize or jackpot in the Canadian or other foreign lottery if the consumer purchases lottery tickets or interests in foreign lottery tickets from Defendants;
- b. it is legal for Defendants to sell foreign lottery tickets or interests in foreign lottery tickets to consumers in the United States and for consumers in the United States to purchase foreign lottery tickets or interests; and
- c. the consumer has already won a substantial monetary award or other prize in a lottery or sweepstakes in which the consumer had participated.

51. Defendants have thereby violated Section 310.3(a)(4) of the Rule, 16 C.F.R. § 310.3(a)(4).

## CONSUMER INJURY

52. 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**

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

54. 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 monies.

55. 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, the Federal Trade Commission, requests that this Court, as authorized by 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 pursuant to the Court's own equitable powers:

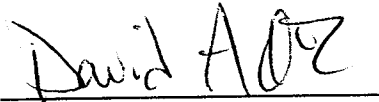
1. Award Plaintiff such preliminary injunctive and ancillary relief as may be necessary to avert the likelihood of consumer injury during the pendency of this action and to preserve the possibility of effective final relief, including but not limited to, temporary and preliminary injunctions and an order freezing certain Defendants' 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: September 30, 2002

Respectfully Submitted,

WILLIAM E. KOVACIC  
General Counsel



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