

engaged in the deceptive sale and purchase of merchandise over the Internet, posing as buyers, sellers, and an online escrow service to deceive consumers into parting with money or merchandise.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over Plaintiff's claims pursuant to 28 U.S.C. §§ 1331(a), 1337(a), and 1345, and 15 U.S.C. §§ 53(b) and 57b.

4. Venue in the Eastern District of Virginia is proper under 28 U.S.C. § 1391(b) and/or (d), and 15 U.S.C. § 53(b).

PLAINTIFF

5. Plaintiff Federal Trade Commission is an independent agency of the United States government created by the FTC Act, 15 U.S.C. §§ 41 *et seq.* The Commission is charged with enforcement of Section 5(a) of the FTC Act, 15 U.S.C. § 45, which prohibits unfair or deceptive acts or practices in or affecting commerce, as well as enforcement of the Mail or Telephone Order Merchandise Rule, 16 C.F.R. Part 435. The Commission is authorized to initiate federal district court proceedings to enjoin violations of the FTC Act, and to secure such equitable relief as is appropriate in each case, including restitution and disgorgement. 15 U.S.C. §§ 53(b) and 57b.

DEFENDANT(S)

6. The Defendant(s) are one or more individuals or entities whose identities are unknown to the Commission at this time. The Defendant(s) transact business throughout the United States, including in the Eastern District of Virginia.

COMMERCE

7. At all times relevant to this complaint, Defendant(s) have maintained a substantial course of trade in or affecting commerce within the meaning of Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANT(S)' BUSINESS ACTIVITIES

8. Defendant(s) operate an elaborate scheme designed to defraud consumers attempting to buy or sell merchandise via the Internet. Defendant(s) initiate sales transactions for high-priced items such as computers and cars over the Internet, posing as buyers in some instances and sellers in others. Their goal is always the same, to trick consumers into sending them money or merchandise and then disappear without providing anything in return.

9. These Defendant(s) search for victims in numerous forums for Internet shopping, the most common being Internet auction web sites. For example, Defendant(s) look for auctions for high-priced items such as laptop computers on popular Internet auction sites like eBay.com. Defendant(s) then contact auction sellers by e-mail, and offer to buy their items for a certain price, but only if sellers agree to remove their items from the auction sites and consummate the sales independently. Defendant(s) also place classified advertisements for high-priced items, such as automobiles, on the Internet to lure buyers.

10. Regardless of whether they are posing as buyers or sellers, Defendant(s) insist on conducting the transactions through a specific online escrow service, www.premier-escrow.com (Premier-escrow). In fact, this escrow service, upon information and belief, is maintained or controlled, in whole or in part, by Defendant(s).

11. The web site for Premier-escrow claims to offer legitimate escrow services, representing that buyers and sellers will be assured of an online transaction free of fraud. The web site sets forth a five-step process for engaging in an escrow transaction: First, the parties agree to the purchase, and open an account on the escrow web site, including a description of the parties, the merchandise, the sale price and the number of days for the buyer's inspection period. Second, the buyer submits payment to Premier-escrow. Third, Premier-escrow notifies the seller that it has secured the payment, and "authorizes the seller to ship the merchandise and requests tracking information from the seller." Premier-escrow then verifies that the buyer receives the

merchandise. Fourth, the buyer is allowed an inspection period to reject the merchandise. Fifth and finally, if the buyer does not reject the merchandise, Premier-escrow pays the seller and the transaction is complete. Otherwise, the merchandise is sent back to the seller and, after verification, the money is returned to the buyer.

12. Defendant(s) make further representations on their web site regarding the protection and security Premier-escrow provides to sellers and buyers online. For example, Defendant(s) represent that sellers will be “highly protected against payment fraud, as all disadvantages resulting from credit card payment methods, such as fraudulent use by the prospective buyer, are eliminated.” Defendants further represent on this web site that Premier-escrow has an “active and efficient collaboration with the IFCC,” the Internet Fraud Complaint Center operated by the Federal Bureau of Investigations (FBI).

13. U.S. consumers agree to purchase merchandise from Defendant(s) who are posing as legitimate sellers. These consumers also agree to use Premier-escrow, as recommended by Defendant(s), relying on Defendant(s)’ representations on the Premier-escrow web site regarding the security of the transaction. The consumers then are instructed to send funds to Premier-escrow. Once Defendant(s) receive these consumers’ funds, they terminate all communications with consumers.

14. Other consumers agree to sell merchandise to Defendant(s) who are posing as legitimate buyers. These consumers also agree to use Premier-escrow, as recommended by Defendant(s), similarly relying on Defendant(s)’ representations on the Premier-escrow web site regarding the security of the transaction. The consumers are told that Premier-escrow has their payment securely in hand, and are instructed to ship their merchandise to Defendant(s), usually to a mail drop location or hotel in the U.S. and abroad. Once Defendant(s) receive these consumers’ merchandise, they terminate all communications with consumers.

15. Consumers' extensive efforts to contact Defendant(s) to receive refunds or the return of their merchandise are unsuccessful. Consumers attempt to reach Defendant(s) through the individual e-mail addresses provided by Defendant(s), and through telephone numbers and e-mail addresses provided on Premier-escrow's website. Their email messages and telephone calls go unreturned.

16. Defendant(s) hide their identities by registering with free e-mail service providers, using fake identities, or stolen identities of unwitting persons, and used mail drop locations and hotels to accept delivery of victims' merchandise or funds.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

COUNT I

17. In the course of offering merchandise for sale via the Internet, Defendant(s) represent, expressly or by implication, that consumers who agree to purchase Defendant(s)' merchandise and send Defendant(s) the agreed-upon payment will receive the offered merchandise.

18. In truth and in fact, in numerous instances, consumers who agree to purchase Defendant(s)' merchandise and send Defendant(s) the agreed-upon payment do not receive the offered merchandise.

19. Therefore, the representations set forth in paragraph 17 are false and misleading and constitute deceptive acts and practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT II

20. In the course of offering to purchase merchandise being sold by consumers via the Internet, Defendant(s) represent, expressly or by implication, that consumers who agree to sell their merchandise to Defendant(s) and send that merchandise to Defendant(s) will receive the agreed-upon payment.

21. In truth and in fact, in numerous instances, consumers who agree to sell their merchandise to Defendant(s) and send that merchandise to Defendant(s) do not receive the agreed-upon payment.

22. Therefore, the representations set forth in paragraph 20 are false and misleading and constitute deceptive acts and practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT III

23. In the course of offering escrow services via the Internet, Defendant(s) represent to consumers who buy merchandise via the Internet, expressly or by implication, that after taking custody of the buyers' funds, they will return such funds to the buyers if the sellers fail to ship the merchandise.

24. In truth and in fact, in numerous instances, after taking custody of buyers' funds, Defendant(s) do not return such funds to the buyers when the sellers fail to ship the merchandise.

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

COUNT IV

26. In the course of offering escrow services via the Internet, Defendant(s) have represented to consumers who sell merchandise over the Internet, expressly or by implication, that, after taking custody of the buyers' funds, they will deliver such funds to the sellers upon the sellers' shipment of merchandise to the buyers.

27. In truth and in fact, in numerous instances, Defendant(s) do not deliver such funds to the sellers upon the sellers' shipment of merchandise to the buyers.

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

§ 45(a).

THE MAIL OR TELEPHONE ORDER MERCHANDISE RULE

29. The FTC promulgated the Mail or Telephone Order Merchandise Rule, 16 C.F.R. Part 435, on October 22, 1975 ("the Rule"), and revised the Rule on September 21, 1993. The revised Rule became effective on March 1, 1994, and has remained in full force and effect since that time.

30. The Rule applies to sales in which the buyer has ordered merchandise from the seller by mail or directly or indirectly by telephone, such as by fax machines and computers. 16 C.F.R. §§ 435.1 and 435.2 (a) and (b).

31. The Rule prohibits a seller from soliciting any order for the sale of merchandise to be ordered by the buyer through the mail or telephone, unless, at the time of the solicitation, the seller has a reasonable basis to expect that it will be able to ship any ordered merchandise to the buyer within the time stated in the solicitation, or, if no time is stated, within thirty days of the completion of the order. 16 C.F.R. § 435.1(a)(1).

32. The Rule requires that the seller follow certain procedures if merchandise ordered through the mail or by telephone will not be shipped within the applicable time limit. Specifically, 16 C.F.R. § 435.1(b)(1) requires that, when there is a shipping delay, the seller must, prior to the expiration of the applicable time, offer the buyer an option either to agree to the delay or to cancel the order and receive a prompt refund, as defined in 16 C.F.R. § 435.2(f).

33. The Rule also requires that a seller deem an order canceled and make a prompt refund to the buyer whenever the seller has failed to ship within the specified time period and has failed to offer the buyer the option to consent to further delay or to cancel the order. 16 C.F.R. § 435.1(c).

34. Pursuant to Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), and 16 C.F.R. § 435.1, violations of the 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 MAIL OR
TELEPHONE ORDER MERCHANDISE RULE**

COUNT V

35. In numerous instances, Defendant(s) have solicited orders for the sale of merchandise to be ordered by the buyer indirectly through the telephone or the Internet without a reasonable basis to expect that he will be able to ship any ordered merchandise to the buyer within the time stated in the solicitation, or, if no time was clearly and conspicuously stated, within thirty days of receipt of a properly completed order, thereby violating 16 C.F.R. § 435.1(a)(1).

COUNT VI

36. In numerous instances, after soliciting orders for the sale of merchandise ordered by the buyer indirectly through the telephone and being unable to ship merchandise within the applicable time as set out in Section 435.1(a)(1) of the Rule, Defendant(s) have violated the Rule by failing to offer to the buyer, clearly and conspicuously and without prior demand, an option either to consent to a delay in shipping or to cancel the order and receive a prompt refund, thereby violating 16 C.F.R. § 435.1(b)(1).

COUNT VII

37. In numerous instances, Defendant(s) have failed to make a "prompt refund," as that term is defined in 16 C.F.R. § 435.2(f), to buyers when such refunds were required by Section 435.1(c) of the Rule, thereby violating 16 C.F.R. § 435.1(c).

CONSUMER INJURY

38. Consumers throughout the United States have been injured and will continue to be injured by Defendant(s)' violations of the FTC Act as set forth above. In addition, Defendant(s) have been unjustly enriched as a result of their unlawful acts and practices. Absent injunctive

relief by this Court, Defendant(s) are likely to continue to injure consumers, reap unjust enrichment, and harm the public.

THIS COURT'S POWER TO GRANT RELIEF

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that this Court, as authorized by Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and pursuant to its own equitable powers:

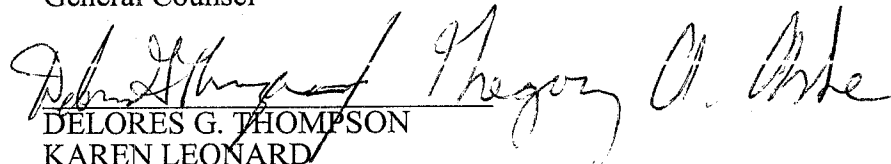
- (1) Permanently enjoin and restrain Defendant(s) engaging or assisting others in engaging in violations of the FTC Act;
- (2) Award Plaintiff such preliminary injunctive and ancillary relief as may be necessary to avert the likelihood of consumer injury during the pendency of this action and to preserve the possibility of effective final relief;
- (3) Award such equitable relief as the Court finds necessary to redress injury to consumers resulting from Defendant(s)' violations of Section 5(a) of the FTC Act, including, but not limited to, rescission of contracts and restitution, other forms of redress, and the disgorgement of unlawfully obtained monies or property; and

(4) Award Plaintiff the costs of bringing this action as well as such additional equitable relief as the Court may determine to be just and proper.

Dated: April 16, 2003

Respectfully submitted,

WILLIAM E. KOVACIC
General Counsel

A handwritten signature in cursive script, appearing to read "DeLores G. Thompson, Gregory A. Ashe".

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