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IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

U.S. DISTRICT COURT  
MIDDLE DISTRICT OF TN

FEDERAL TRADE COMMISSION, )  
 )  
 Plaintiff, )  
 v. )  
 INTERNET MARKETING GROUP, INC., )  
 a Tennessee corporation; )  
 ONESETPRICE, INC., a Florida corporation; )  
 FIRST CHOICE TERMINAL, INC., )  
 a Louisiana corporation; )  
 FIRST CHOICE TERMINAL, INC., )  
 an Arizona corporation; )  
 B & C VENTURES, INC., )  
 a Nevada corporation; )  
 RPM MARKETING GROUP, INC., )  
 a Florida corporation; )  
 NATIONAL EVENT COORDINATORS, INC., )  
 a Florida corporation; )  
 DAVID G. CUTLER; )  
 CINDY GANNON; )  
 PAUL D. BONNALLIE; )  
 TISA CHRISTIANA SPRAUL; and )  
 MICHAEL J. HATCH, )  
 Defendants. )

CIVIL ACTION No.

3 - 04 0568

JUDGE CAMPBELL

United States District Judge

JUDGE KNOWLES

United States Magistrate Judge

**UNDER SEAL**

**PLAINTIFF FEDERAL TRADE COMMISSION'S COMPLAINT  
FOR INJUNCTION AND OTHER EQUITABLE RELIEF**

Plaintiff, the Federal Trade Commission (the "Commission"), for its Complaint, alleges:

1. The Commission brings this action under Sections 5(a), 13(b), and 19 of the

Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 45(a), 53(b), and 57b, and the Telemarketing and Consumer Fraud and Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C. §§ 6101-6108, as amended, to secure preliminary and permanent injunctive relief, rescission of contracts and restitution, disgorgement of ill-gotten gains, and other equitable relief against defendants for engaging in unfair or deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the Commission’s Trade Regulation Rules entitled “Telemarketing Sales Rule (“TSR”),” 16 C.F.R. Part 310, as amended, and “Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures” (the “Franchise Rule”), 16 C.F.R. Part 436, in connection with the marketing and sale of various business ventures involving phone cards, public-access Internet terminals, and multi-purpose, public-access Internet and telecommunications terminals.

### **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 Middle District of Tennessee is proper under 15 U.S.C. § 53(b) and 28 U.S.C. § 1391(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 Telemarketing Act,

15 U.S.C. §§ 6101-6108, and the TSR, 16 C.F.R. Part 310, as amended, prohibiting deceptive or abusive telemarketing practices; and the Franchise Rule, 16 C.F.R. Part 436, imposing full and accurate disclosure requirements on brokers and sellers of franchises and business opportunities. The Commission is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act, the Telemarketing Act, the TSR, and the Franchise Rule, and to secure such equitable relief as is appropriate in each case, including restitution for injured consumers. 15 U.S.C. §§ 53(b), 57b, 6102(c) and 6105(b).

### DEFENDANTS

5. **Defendant Internet Marketing Group, Inc.** (“IMG”) is a Tennessee corporation with its principal place of business at 111 Opossum Hollow Road, Watertown, Tennessee 37184. IMG markets and sells to the public business ventures involving the ownership and operation of multi-purpose, public-access Internet and telecommunications terminals. IMG resides and transacts business in the Middle District of Tennessee.

6. **Defendant OneSetPrice, Inc.** (“OSP”) is a Florida corporation with its principal place of business at 6220 South Orange Blossom Trail, Suite 320, Orlando, Florida 32809. OSP has offered for sale and sold to the public business ventures involving the distribution of telephone calling cards. OSP has transacted business in the Middle District of Tennessee, or should, in the interests of justice, be a defendant to this action pursuant to 15 U.S.C. §53(b).

7. **Defendant First Choice Terminal, Inc.** (“FCTLA”) is a Louisiana corporation with its principal place of business at 3084 West Fork Drive, Suite A, Baton Rouge, Louisiana 70816. FCTLA has offered for sale and sold to the public business ventures involving the

ownership and operation of public-access Internet terminals. FCTLA is owned by defendant B & C Ventures, Inc., a Nevada holding company. FCTLA has transacted business in the Middle District of Tennessee, or should, in the interests of justice, be a defendant to this action pursuant to 15 U.S.C. §53(b).

8. **Defendant First Choice Terminal, Inc.** (“FCTAZ”) is an Arizona corporation with its principal place of business at 7320 E. Butherus Drive #206, Scottsdale, Arizona 85260. FCTAZ has offered for sale and sold to the public business ventures involving the ownership and operation of public-access Internet terminals. FCTAZ is owned by defendant B & C Ventures, Inc., a Nevada holding company. FCTAZ has transacted business in the Middle District of Tennessee, or should, in the interests of justice, be a defendant to this action pursuant to 15 U.S.C. §53(b).

9. **Defendant B & C Ventures, Inc.** (“B&C”) is a Nevada corporation with its registered office at 675 Sierra Rose Drive, Suite 105, Reno, Nevada 89511. B&C owns all of the stock of defendants FCTLA and FCTAZ. B&C has transacted business in the Middle District of Tennessee, or should, in the interests of justice, be a defendant to this action pursuant to 15 U.S.C. §53(b).

10. **Defendant RPM Marketing Group, Inc.** (“RPM”) is a Florida corporation with its principal place of business at 6220 South Orange Blossom Trail, Suites 318 and 511, Orlando, Florida 32809. RPM has marketed the public-access Internet terminal business ventures sold by FCTLA and FCTAZ, and has provided training and support to purchasers of the business ventures sold by IMG. RPM has transacted business in the Middle District of Tennessee, or

should, in the interests of justice, be a defendant to this action pursuant to 15 U.S.C. §53(b).

11. **Defendant National Event Coordinators, Inc.** (“NEC”) is a Florida corporation with its principal place of business at 1207 35<sup>th</sup> Street, Building B, Orlando, Florida 32805. NEC has conducted telemarketing operations for the business ventures marketed and sold by OSP, FCTLA, FCTAZ, and RPM. NEC has transacted business in the Middle District of Tennessee, or should, in the interests of justice, be a defendant to this action pursuant to 15 U.S.C. §53(b).

12. **Defendant David G. Cutler** is an owner of OSP, FCTLA, FCTAZ, RPM, and NEC, an officer of OSP and RPM, a director of RPM and a manager of IMG, OSP, FCTLA, FCTAZ, RPM, and NEC. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled or had authority to control, or participated in the acts and practices of defendants IMG, OSP, FCTLA, FCTAZ, RPM, and NEC, including the acts and practices set forth in this Complaint. Cutler has transacted business in the Middle District of Tennessee, or should, in the interests of justice, be a defendant to this action pursuant to 15 U.S.C. §53(b).

13. **Defendant Cindy Gannon** is the President of IMG. Cindy Gannon is also known as Cindy Gannon Austen. At all times material to this Complaint, acting alone or in concert with others, she has formulated, directed, controlled or had authority to control, or participated in the acts and practices of defendant IMG, including the acts and practices set forth in this Complaint. Gannon resides and transacts business in the Middle District of Tennessee.

14. **Defendant Paul D. Bonnallie** is an owner and officer of OSP and a manager of RPM. In addition, Bonnallie is the President, Secretary, and Treasurer of defendant B & C. At

all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled or had authority to control, or participated in the acts and practices of defendants OSP, FCTLA, FCTAZ, and RPM, including the acts and practices set forth in this Complaint. Bonnallie has transacted business in the Middle District of Tennessee, or should, in the interests of justice, be a defendant to this action pursuant to 15 U.S.C. §53(b).

15. **Defendant Tisa Christiana Spraul** is the President of NEC and a manager of RPM. At all times material to this Complaint, acting alone or in concert with others, she has formulated, directed, controlled or had authority to control, or participated in the acts and practices of defendants NEC and RPM, including the acts and practices set forth in this Complaint. Spraul has transacted business in the Middle District of Tennessee, or should, in the interests of justice, be a defendant to this action pursuant to 15 U.S.C. §53(b).

16. **Defendant Michael J. Hatch** is an officer and director of RPM, a manager of OSP, and a sales representative for IMG, FCTLA, and FCTAZ. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled or had authority to control, or participated in the acts and practices of defendants IMG, OSP, FCTLA, FCTAZ, and RPM, including the acts and practices set forth in this Complaint. Hatch has transacted business in the Middle District of Tennessee, or should, in the interests of justice, be a defendant to this action pursuant to 15 U.S.C. §53(b).

17. The corporate defendants IMG, OSP, FCTLA, FCTAZ, B&C, RPM, and NEC have operated and continue to operate a common enterprise to sell business ventures to the public. The individual defendants Cutler, Gannon, Bonnallie, Spraul, and Hatch have

formulated, directed, controlled or had authority to control, or participated in the acts and practices of the corporate defendants that comprise the common enterprise. The common enterprise transacts or has transacted business in the Middle District of Tennessee. A substantial part of the events or omissions giving rise to the claims asserted herein have occurred in the Middle District of Tennessee.

### **COMMERCE**

18. At all times relevant to this Complaint, defendants have maintained a substantial course of trade in the marketing, sale, or offering for sale of business ventures in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

### **DEFENDANTS’ BUSINESS ACTIVITIES**

19. Since August of 2001, defendants have been engaged in a common enterprise to market and sell to the public a variety of business ventures involving telephone calling card distributorships and the ownership and operation of public-access Internet and telecommunication terminals. Although the nature of defendants’ business ventures has changed over time, their marketing and sales techniques have remained constant. Defendants market and sell business ventures at weekend sales seminars or “shows” held at hotels around the United States. Consumers are invited to attend these shows through an elaborate telemarketing campaign wherein recorded telephone messages are transmitted through an automated telephone dialing system to consumers in targeted geographic areas. Consumers who respond to the telemarketing messages by calling a toll-free “reservation” number receive show “invitations,” directions, and, frequently, discount certificates. Defendants’ shows are conducted in stages,

beginning with general sessions at which an overview of the business venture is presented to a large group of potential purchasers. Through the use of written applications and a “point” system for rating prospects, the most likely potential purchasers are selected as “qualified” purchasers, and invited to attend at least one more detailed session. Qualified purchasers are then pressured to sign a Purchase Agreement and tender payment. All defendants’ business ventures are sold under a tiered price system, with “Bronze,” “Silver,” “Gold,” “Platinum,” and “Titanium” distributor/owner-operator levels. Defendants always promise to provide their business venture purchasers with a high level of assistance, including training, marketing, accounting, and technical support.

20. Initially, since August of 2001, the defendants’ common enterprise, acting through defendant OSP, marketed and sold OneSetPrice business ventures involving the distribution of telephone calling cards. OneSetPrice distributorships were sold at prices ranging from \$12,995 to \$71,120. In its promotional materials and at its shows, OSP represented to consumers that OneSetPrice calling card distributors could earn substantial amounts of money, not only through initial sales of calling cards, but also from “recharges” of calling cards for which initial pre-paid time was expiring (“residual income”). Typical income representations included:

- (a) OneSetPrice calling cards have an 87% recharge rate;
- (b) OneSetPrice calling cards have an “average” recharge rate of 50%, which translates into substantial residual income for distributors based upon the number of cards sold and the frequency at which a card is recharged;
- (c) If consumers finance their distributorships “creatively,” any debt incurred would



easily be repaid from earnings;

- (d) Purchasers will earn so much money that they will be able to quit their regular jobs within six months; and
- (e) It is simple “to build a weekly residual income of hundreds if not thousands of dollars or more.”

OSP’s purchase agreements obligated OSP to rescind and make restitution if it failed to provide purchasers with the equipment, supplies, or products necessary to begin substantial operation of the purchaser’s business within a specified period of time. OSP was also obligated to provide refunds to purchasers if they cancelled their purchase agreements within three business days. In addition, OSP promised to refund purchasers’ down payments if they were unable to obtain financing for, or otherwise afford payment of, the balances due under their purchase agreements.

21. In reliance on the representations set forth in Paragraph 19, consumers purchased OneSetPrice business ventures. However, few, if any, OSP distributors earned any substantial residual income. They sold few calling cards, and those calling cards they did sell were almost never recharged. Moreover, OSP has refused to provide refunds to purchasers who attempted to cancel their purchase agreements within three days or who did not receive their equipment, supplies, or products in a timely manner. OSP has also refused to refund down payments to purchasers who were unable to obtain financing for, or otherwise afford to pay, the balances due under their purchase agreements.

22. By September of 2003, OSP was the subject of numerous consumer complaints and the target of at least three state regulatory investigations. Consequently, at about that time,

the defendants' common enterprise began using defendants FCTLA, FCTAZ (two companies owned by defendant B&C), and RPM to sell First Choice Terminal business ventures involving the ownership and operation of public-access Internet terminals. Defendant RPM was responsible for the marketing of these business ventures, including arranging the telemarketing campaign to make the initial consumer contacts, scheduling sales shows throughout the country, and presenting the seminars at which the business ventures were sold. RPM executed purchase agreements on behalf of FCTLA and FCTAZ as their agent. First Choice Terminal business ventures were sold at prices ranging from \$15,995 to \$249,950. In their promotional materials and at their shows, FCTLA, FCTAZ, and RPM told consumers that Internet terminal owner-operators would earn substantial amounts of money through vending Internet and telecommunications services from Internet terminals to the public, as well as from selling advertising facilities on the terminals themselves. Typical income representations included:

- (a) First Choice Terminal Internet terminals experienced 19.39 average users per day, generating an average revenue of \$2.13 per session, or \$41.30 per day or \$14,868 per year per terminal;
- (b) Each First Choice Terminal Internet terminal represents a potential \$4,200 per month in advertising revenues; and
- (c) First Choice Terminal owner-operators would realize net profits ranging from \$4,468 to \$27,207 in their first calendar quarter of terminal operations, depending on the owner-operator level purchased.

FCTLA, FCTAZ, and RPM's purchase agreements obligated FCTLA, FCTAZ, and RPM to provide refunds to purchasers if they cancelled their purchase agreements within three business days.

23. In reliance on the representations set forth in Paragraph 21, consumers purchased First Choice Terminal business ventures. However, few, if any, First Choice Terminal owner-operators received revenues in the amounts represented as "average" or "typical" by defendants. Moreover, FCTLA and RPM refused to provide refunds to purchasers who attempted to cancel their purchase agreements within three days.

24. By the end of 2003, consumers had begun to link FCTLA, FCTAZ, and RPM with OSP, and OSP had defaulted on settlement agreements with the states of Colorado and Florida. The defendants' common enterprise moved its base of operations out of the state of Florida to the state of Tennessee. Consequently, in January of 2004, the defendants' common enterprise began using defendant IMG to market and sell business ventures involving the ownership and operation of multi-purpose, public-access Internet and telecommunications terminals. IMG business ventures are sold at prices ranging from \$15,435 to \$127,495. In its promotional materials and at its shows, IMG tells consumers that Internet terminal owner-operators can earn substantial amounts of money through vending Internet and telecommunications services from Internet terminals to the public, as well as from selling advertising facilities on the terminals themselves. Typical income representations include:

- (a) IMG owner-operator's "revenue is great";

- (b) Public-access Internet terminals experience average revenue of \$41.30 per day, each IMG terminal can generate up to \$3,600 per calendar quarter in Internet usage revenues alone, and anything over \$99 per terminal will represent “pure profit”;
- (c) Each IMG terminal represents a potential \$3,000 per month in advertising revenues; and
- (d) Each IMG terminal creates a potential of \$2,400 in profit per month, and that a “Gold” package of three (3) terminals, generating profits of \$7,200 per month, will yield a 199% return on investment within fifteen (15) months.

IMG’s purchase agreements obligate IMG to rescind and make restitution if it fails to provide purchasers with the equipment, supplies or products necessary to begin substantial operation of the purchaser’s business within a specified period of time. IMG also promises to provide refunds to purchasers if they cancel their purchase agreements within three business days.

25. Until September of 2003, the defendants’ common enterprise used OSP to conduct its own telemarketing campaign to solicit consumers’ attendance at OSP’s sales seminars. By June, 2003, OSP had violated “No Call” telemarketing laws in the states of Colorado and Oregon. In October of 2003, the Do Not Call provisions of the Commission’s TSR became effective. Starting in September, the defendants’ common enterprise began to use defendant NEC to conduct its telemarketing campaign on behalf of defendants FCTLA, FCTAZ, and RPM. The common enterprise used automated dialing and recorded messages to make numerous outbound telephone calls to consumers throughout the United States for the purpose of

soliciting members of the public to attend sales shows featuring the business ventures marketed and sold by FCTLA, FCTAZ, and RPM. In January of 2004, when the defendants' common enterprise moved its base of operations from Florida to Tennessee, it began using defendant IMG to conduct its own telemarketing campaign. Since that time, the common enterprise, acting through defendant IMG, has engaged in a telemarketing campaign and made numerous outbound telephone calls to consumers throughout the United States for the purpose of soliciting members of the public to attend sales shows featuring the business ventures marketed and sold by IMG. On or after October 17, 2003, as part of these telemarketing campaigns, the defendants' common enterprise, acting through defendants NEC and IMG, has made many calls to private residential telephone numbers that were registered on the Commission's National Do Not Call Registry prior to August 31, 2003.

26. In connection with the sales of each of these business ventures, the defendants' common enterprise, acting through defendants OSP, FCTLA, FCTAZ, RPM, and IMG, has provided a basic disclosure statement to prospective purchasers. However, this disclosure statement was provided less than 10 days prior to the required execution of the purchase agreement and did not contain all of the information required to be disclosed pursuant to the Commission's Franchise Rule. Moreover, defendants' common enterprise, acting through defendants OSP, FCTLA, FCTAZ, RPM, and IMG, made representations regarding potential earnings of purchasers in connection with the sale of its business ventures. However, defendants did not provide any of the required earnings claims disclosures or statements required by the Commission's Franchise Rule.

## **SECTION 5(A) OF THE FTC ACT**

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

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

## **VIOLATIONS OF SECTION 5(A) OF THE FTC ACT**

### **COUNT I**

29. In numerous instances, in connection with the marketing, sale or offering for sale of business ventures, defendants have represented, expressly or by implication, that purchasers of the business ventures are likely to receive substantial income.

30. In truth and in fact, in numerous instances, purchasers of the business ventures do not receive substantial income.

31. Therefore, the representations set forth in Paragraph 29 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**

32. In numerous instances, in connection with the marketing, sale or offering for sale of business ventures, defendants have made the following representations, expressly or by implication, regarding the terms or conditions under which purchasers of the business ventures would receive refunds:

- (a) Purchasers of the business ventures would receive refunds if they did not receive within a specified period of time the equipment, supplies or products necessary to begin substantial operation of the business;
- (b) Purchasers of the business ventures would receive refunds if they cancelled the purchase agreement within three business days of signing the agreement; and/or
- (c) Purchasers of the business ventures would receive refunds if they were unable to obtain financing for, or otherwise afford payment of, the balance due under the purchase agreement.

33. In truth and in fact, in numerous instances,

- (a) Purchasers of the business ventures did not receive refunds when they did not receive within a specified period of time the equipment, supplies or products necessary to begin substantial operation of the business;
- (b) Purchasers of the business ventures did not receive refunds when they cancelled the purchase agreement within three business days of signing the agreement; and/or
- (c) Purchasers of the business ventures did not receive refunds when they were unable to obtain financing for, or otherwise afford payment of, the balance due under the purchase agreement.

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).

## THE FRANCHISE RULE

35. The Commission promulgated the Franchise Rule (16 C.F.R. Part 436) pursuant to Section 18 of the FTC Act, 15 U.S.C. § 57a. The Franchise Rule became effective on October 21, 1979, and remains in full force and effect.

36. The business opportunities sold by the defendants are “franchises” as that term is defined in the Franchise Rule, 16 C.F.R. § 436.2(a).

37. Defendants are “franchisors” or “franchise brokers” as those terms are defined in the Franchise Rule, 16 C.F.R. § 436.2(c) and (j).

38. The Franchise Rule requires any franchisor or franchise broker to provide prospective franchisees with a complete and accurate basic disclosure statement containing twenty categories of information, including information about the history of the franchisor and its officers and information about other franchisees, at least ten (10) business days before accepting a signed contract or payment from the prospective franchisee. 16 C.F.R. § 436.1(a)(1)-(20). Timely disclosure of this information enables a prospective franchisee to assess the potential risks involved in the purchase of the franchise.

39. The Franchise Rule additionally requires: (1) that a franchisor or franchise broker give prospective franchisees a document disclosing the material basis (or lack thereof) for any oral, written, or visual representation which states a specific level of potential sales, income, gross or net profit for those prospective franchisees, or which states other facts which suggest such a specific level, 16 C.F.R. § 436.1(b)-(e); and (2) that a franchisor or franchise broker, in immediate conjunction with any generally disseminated earnings claim, disclose the number and



percentage of prior purchasers known to have earned as much or more than the amount claimed, and include a warning that the earnings claim is only an estimate, 16 C.F.R. § 436.1(e)(3)-(4).

40. Pursuant to Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), and 16 C.F.R. § 436.1, violations of the Franchise 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 FRANCHISE RULE**

### **COUNT III**

41. In numerous instances, in connection with the marketing, sale or offering for sale of franchises, as “franchise” is defined in the Franchise Rule, 16 C.F.R. § 436.2(a), defendants have failed to provide prospective franchisees with accurate and complete disclosure statements within the time period required by the Franchise Rule, thereby violating Section 436.1(a) of the Franchise Rule, 16 C.F.R. § 436.1(a), and Section 5 of the FTC Act, 15 U.S.C. § 5(a).

### **COUNT IV**

42. In numerous instances, in connection with the marketing, sale or offering for sale of franchises, as “franchise” is defined in the Franchise Rule, 16 C.F.R. § 436.2(a), defendants have made earnings claims within the meaning of the Franchise Rule, 16 C.F.R. § 436.1(b)-(e), but have failed to give prospective franchisees the earnings claim document required by the Franchise Rule or have failed to disclose the information required by the Franchise Rule in immediate conjunction with the claims, thereby violating Section 436.1(b)-(e) of the Franchise Rule, 16 C.F.R. § 436.1(b)-(e), and Section 5 of the FTC Act, 15 U.S.C. § 5(a).

**THE TELEMARKETING SALES RULE  
AND THE NATIONAL DO NOT CALL REGISTRY**

43. In 1994, Congress directed the FTC to prescribe rules prohibiting abusive and deceptive telemarketing acts or practices pursuant to the Telemarketing Act, 15 U.S.C. §§ 6101-6108. On August 16, 1995, the FTC adopted the TSR (the “Original TSR”), 16 C.F.R. Part 310, which became effective on December 31, 1995. On January 29, 2003, the FTC amended the TSR by issuing a Statement of Basis and Purpose (“SBP”) and the final amended TSR (the “Amended TSR”). 68 Fed. Reg. 4580, 4669.

44. Among other things, the Amended TSR established a “do-not-call” registry, maintained by the Commission (the “National Do Not Call Registry” or “Registry”), of consumers who do not wish to receive certain types of telemarketing calls. Consumers can register their telephone numbers on the Registry without charge either through a toll-free telephone call or over the Internet at *donotcall.gov*.

45. Sellers, telemarketers, and other permitted organizations can access the Registry over the Internet at *telemarketing.donotcall.gov* to download the registered numbers. Sellers and telemarketers are prohibited from calling registered numbers in violation of the TSR. 16 C.F.R. § 310.4(b)(1)(iii)(B).

46. Consumers who receive telemarketing calls to their registered numbers can complain of Registry violations the same way they registered, through a toll-free telephone call to 1-888-382-1222 or over the Internet at *donotcall.gov*, or by contacting law enforcement.

47. On or after October 17, 2003, the FTC began enforcement of the National Do Not Call Registry against all sellers and telemarketers subject to the FTC’s jurisdiction.

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), a violation of the TSR constitutes an unfair or deceptive act or practice in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

49. Defendants are “sellers” or “telemarketers” engaged in “telemarketing,” as those terms are defined in the TSR. 16 C.F.R. §§ 310.2(z), (bb) and (c).

## **VIOLATION OF THE TELEMARKETING SALES RULE**

### **COUNT V**

50. In numerous instances, in connection with telemarketing, defendants have engaged in or caused others to engage in initiating an outbound telephone call to a person’s telephone number on the National Do Not Call Registry, in violation of the TSR, 16 CFR § 310.4(b)(1)(iii)(B).

### **CONSUMER INJURY**

51. 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**

52. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and such other relief as the Court may deem appropriate to halt and redress violations

of the FTC Act. This Court, in the exercise of its equitable jurisdiction, may award other ancillary relief, including but not limited to rescission of contracts and restitution, and the disgorgement of ill-gotten gains, to prevent and remedy injury caused by defendants' law violations.

53. Section 19 of the FTC Act, 15 U.S.C. § 57b, empowers this Court to grant such relief as the Court finds necessary to redress injury to consumers or other persons resulting from defendants' violations of the Franchise Rule, including the rescission and reformation of contracts and the refund of money.

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), empower this Court to grant 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.

55. This Court, in the exercise of its equitable jurisdiction, may award ancillary relief to remedy injury caused by the defendants' violations of the TSR and the FTC Act.

#### **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 this Court's equitable powers, requests that this 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 the defendants from violating the FTC Act, the Franchise Rule, and the Telemarketing Sales Rule, as alleged herein;

3. Award such equitable relief as the Court finds necessary to redress injury to consumers resulting from defendants' violations of Section 5 of the FTC Act, the Franchise Rule, and the Telemarketing Sales Rule, including but not limited to rescission of contracts and restitution, and the disgorgement of ill-gotten gains by defendants; and

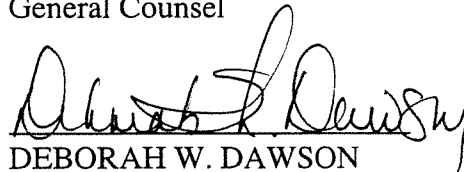
4. Award plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

Dated: June 28, 2004

Respectfully submitted,

**WILLIAM E. KOVACIC**

General Counsel



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