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13
14 IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

15
16 **FEDERAL TRADE COMMISSION,**

17 Plaintiff,

18 v.

19 **PACIFIC OFFICE SYSTEMS, INC.,**

a corporation, and

20 **SUZETTE OPPENHEIM,**

21 individually and as an
officer of the corporation,
and

22 **LESLIE OPPENHEIM,**

23 individually and as an
employee and manager of
24 the corporation,

25 Defendants.

Case No. 00-10293 DDP (CTx)

Judge Dean D. Pregerson

Magistrate Judge Carolyn Turchin

**AMENDED COMPLAINT
FOR INJUNCTIVE AND
OTHER EQUITABLE RELIEF**

1 Plaintiff, the Federal Trade Commission ("Commission"), by
2 its undersigned attorneys, alleges:

3 1. This is an action under Sections 13(b) and 19 of the
4 Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b)
5 and 57b, and the Telemarketing and Consumer Fraud and Abuse
6 Prevention Act ("Telemarketing Act"), 15 U.S.C. § 6101 *et seq.*,
7 to secure preliminary and permanent injunctive relief,
8 rescission of contracts, restitution, disgorgement, and other
9 equitable relief for defendants' deceptive acts or practices
10 in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a),
11 and the Commission's Trade Regulation Rule entitled
12 "Telemarketing Sales Rule," 16 C.F.R. Part 310, in connection
13 with the sale of nondurable office supplies.

14
15 **JURISDICTION AND VENUE**

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

19 3. Venue in the United States District Court for the
20 Central District of California is proper under 15 U.S.C.
21 § 53(b), and 28 U.S.C. §§ 1391(b) and (c).

22
23 **PLAINTIFF**

24 4. Plaintiff Federal Trade Commission is an independent
25 agency of the United States Government created by statute.

1 15 U.S.C. §§ 41-58. The Commission enforces Section 5(a) of
2 the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or
3 deceptive acts or practices in or affecting commerce. The
4 Commission also enforces the Telemarketing Sales Rule,
5 16 C.F.R. Part 310, which prohibits deceptive or abusive
6 telemarketing practices. The Commission may initiate federal
7 district court proceedings by its own attorneys to enjoin
8 violations of the FTC Act and the Telemarketing Sales Rule and
9 to secure such equitable relief as may be appropriate in each
10 case, including restitution for injured consumers. 15 U.S.C.
11 §§ 53(b), 57b and 6105(b).

12
13 **DEFENDANTS**

14 5. Defendant Pacific Office Systems, Inc. ("Pacific") is
15 a California corporation with its offices and principal place
16 of business located at 22222 Sherman Way, Suite 203, Canoga
17 Park, California 91303. Defendant Pacific transacts or has
18 transacted business in the Central District of California.

19 6. Defendant Suzette Oppenheim is the owner and an
20 officer of Pacific. At all times material to this Complaint,
21 acting alone or in concert with others, she has formulated,
22 directed, controlled, or participated in the acts and practices
23 set forth in this Complaint. Defendant Suzette Oppenheim
24 resides and transacts business in the Central District of
25 California.

1 consumer's regular supplier of photocopier toner or the
2 photocopier manufacturer. In numerous instances, defendants'
3 sales representatives state that the price of toner is about to
4 substantially increase, but that defendants will continue to
5 supply toner to the consumer at the old price.

6 11. Before making the telephone call in which they
7 misrepresent themselves as the consumer's regular supplier or
8 the photocopier manufacturer, defendants, directly or through
9 their sales representatives, often first telephone consumers to
10 obtain the make and model of their photocopiers and the name of
11 the employee responsible for the photocopier.

12 12. In both phone calls, defendants fail to identify
13 themselves or to promptly, and clearly and conspicuously
14 disclose that the purpose of the call is to sell toner.

15 13. Using the information obtained in the first phone
16 call, defendants in the subsequent phone call tell the
17 consumer's employee that the price of toner for the consumer's
18 particular brand and model of photocopier is about to
19 substantially increase. Defendants then state that they will
20 continue to ship toner to the consumer at the old price. The
21 use of make and model information and the reference to the old
22 price convince most consumers' employees that they are speaking
23 with their regular toner suppliers. The consumer's employee
24 believes that he or she is simply being advised that, although
25 a general price increase is going to occur, the consumer will

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1 continue to obtain toner from their regular supplier at the
2 price they have paid in the past.

3 14. In numerous instances, consumers have permitted
4 defendants to ship toner to them, believing that defendants'
5 sales representatives were associated with the consumers'
6 regular suppliers of toner and that the price of the toner
7 ordered would be the same as that charged by their regular
8 suppliers in the recent past. Most consumers do not believe
9 the purpose of defendants' calls is to solicit new orders for
10 toner from a company with which the consumer has had no
11 previous dealings.

12 15. Defendants follow up the telephone calls by causing
13 toner to be shipped to the consumer. Defendants send the
14 consumer an invoice shortly after the toner is shipped. Often
15 the first shipment of toner is quickly followed by one or more
16 additional shipments of toner that the consumer has never
17 agreed to receive. Defendants charge consumers substantially
18 higher prices for toner than what consumers have paid their
19 regular suppliers for toner in the recent past.

20
21 **VIOLATIONS OF SECTION 5 OF THE FTC ACT**

22 **COUNT I**

23 16. In numerous instances, in connection with the sale,
24 offering for sale, or distribution of nondurable office
25 supplies, including photocopier toner, defendants have
26

1 represented, expressly or by implication, through, *inter alia*,
2 telephone calls, that defendants are the consumer's regular
3 supplier or are associated with the manufacturer of the
4 consumer's photocopier.

5 17. In truth and in fact, defendants are not the
6 consumer's regular supplier and are not associated with the
7 manufacturer of the consumer's photocopier.

8 18. Therefore, the representations set forth in
9 Paragraph 15 are false and misleading and constitute deceptive
10 acts or practices in violation of Section 5(a) of the FTC Act,
11 15 U.S.C. § 45(a).

12
13 **COUNT II**

14 19. In numerous instances, in connection with the sale,
15 offering for sale, or distribution of nondurable office
16 supplies, including photocopier toner, defendants have
17 represented, expressly or by implication, through, *inter alia*,
18 telephone calls, that defendants will charge the consumer the
19 same price the consumer has been paying for photocopier toner.

20 20. In truth and in fact, defendants do not charge the
21 consumer the same price as the consumer has been paying for
22 photocopier toner. Defendants charge the consumer
23 substantially more than the consumer has been paying for
24 photocopier toner.

1 21. Therefore, the representations set forth in Paragraph
2 18 are false and misleading and constitute deceptive acts or
3 practices in violation of Section 5(a) of the FTC Act,
4 15 U.S.C. § 45(a).

5
6 **COUNT III**

7 22. In numerous instances, in connection with the sale,
8 offering for sale, or distribution of nondurable office
9 supplies, including photocopier toner, defendants have
10 represented, expressly or by implication, through, *inter alia*,
11 telephone calls, letters, invoices, packing slips, or shipment
12 of office supplies, that consumers ordered the office supplies
13 that were shipped and/or billed to them by defendants.

14 23. In truth and in fact, consumers did not order the
15 office supplies that were shipped and/or billed to them by
16 defendants.

17 24. Therefore, the representations set forth in Paragraph
18 21 are false and misleading and constitute deceptive acts or
19 practices in violation of Section 5(a) of the FTC Act,
20 15 U.S.C. § 45(a).

21
22 **VIOLATIONS OF THE TELEMARKETING SALES RULE**

23 25. In the Telemarketing Act, 15 U.S.C. § 6101 *et seq.*,
24 Congress directed the Commission to prescribe rules prohibiting
25 deceptive and abusive telemarketing acts or practices. On
26

1 August 16, 1995, the Commission promulgated the Telemarketing
2 Sales Rule, 16 C.F.R. Part 310, with a Statement of Basis and
3 Purpose, 60 Fed. Reg. 43842 (August 23, 1995). The
4 Telemarketing Sales Rule became effective December 31, 1995,
5 and since then has remained in full force and effect.

6 26. Telephone calls between a telemarketer and a business
7 that involve the retail sale of nondurable office supplies are
8 subject to the Telemarketing Sales Rule's prohibitions against
9 deceptive and abusive telemarketing acts or practices.
10 16 C.F.R. § 310.6(g). In its Statement of Basis and Purpose
11 for the Telemarketing Sales Rule, the Commission stated:

12 [T]he Commission's enforcement experience
13 against deceptive telemarketers indicates that
14 office and cleaning supplies have been by far
15 the most significant business-to-business
16 problem area: such telemarketing falls within
17 the Commission's definition of deceptive
18 telemarketing acts or practices.

19 60 Fed. Reg. 43842, 43861 (Aug. 23, 1995).

20 27. The Telemarketing Sales Rule prohibits sellers and
21 telemarketers from making a false or misleading statement to
22 induce any person to pay for goods or services. 16 C.F.R.
23 § 310.3(a)(4).

24 28. The Telemarketing Sales Rule requires telemarketers
25 in outbound telephone calls to disclose promptly and in a clear
26 and conspicuous manner the identity of the seller. 16 C.F.R.
§ 310.4(d)(1).

1 29. The Telemarketing Sales Rule also requires
2 telemarketers in outbound telephone calls to disclose promptly
3 and in a clear and conspicuous manner that the purpose of the
4 call is to sell goods and services. 16 C.F.R. § 310.4(d)(2).

5 30. Pursuant to Section 3(c) of the Telemarketing Act,
6 15 U.S.C. § 6102(c), and Section 18(d)(3) of the FTC Act,
7 15 U.S.C. § 57a(d)(3), violations of the Telemarketing Sales
8 Rule constitute unfair or deceptive acts or practices in or
9 affecting commerce, in violation of Section 5(a) of the
10 FTC Act, 15 U.S.C. § 45(a).

11 31. Defendants are "telemarketers" or "sellers" engaged
12 in "telemarketing" as those terms are defined in the
13 Telemarketing Sales Rule, 16 C.F.R. § 310.2(r), (t) and (u).

14
15 **COUNT IV**

16 **FALSE AND MISLEADING STATEMENTS TO INDUCE PAYMENT**

17 32. In numerous instances, in connection with the
18 telemarketing of nondurable office supplies, including
19 photocopier toner, defendants have made false or misleading
20 statements to induce the consumer to pay for photocopier toner,
21 including, but not limited to, misrepresenting, directly or by
22 implication, that (a) defendants are the consumer's regular
23 supplier or are associated with the manufacturer of the
24 consumer's photocopier; (b) defendants will charge the consumer
25 the same price the consumer has been paying for photocopier
26

1 toner; and (c) the consumer ordered the toner that was shipped
2 and/or billed to the consumer by defendants, thereby violating
3 16 C.F.R. § 310.3(a)(4).
4

5 **COUNT V**

6 **FAILURE TO DISCLOSE THE IDENTITY OF THE SELLER**

7 33. In numerous instances, in connection with the
8 telemarketing of nondurable office supplies, including
9 photocopier toner, defendants in "outbound telephone calls," as
10 that term is defined in the Telemarketing Sales Rule, 16 C.F.R.
11 § 310.2(n), have failed to disclose promptly and in a clear and
12 conspicuous manner their identity to the person receiving the
13 call, thereby violating 16 C.F.R. § 310.4(d)(1).
14

15 **COUNT VI**

16 **FAILURE TO DISCLOSE SALES PURPOSE OF CALL**

17 34. In numerous instances, in connection with the
18 telemarketing of nondurable office supplies, including
19 photocopier toner, defendants in "outbound telephone calls," as
20 that term is defined in the Telemarketing Sales Rule, 16 C.F.R.
21 § 310.2(n), have failed to disclose promptly and in a clear and
22 conspicuous manner to the person receiving the call that the
23 purpose of the call was to sell goods, thereby violating
24 16 C.F.R. § 310.4(d)(2).
25
26

1 **CONSUMER INJURY**

2 35. Consumers throughout the United States have suffered
3 substantial monetary loss as a result of defendants' unlawful
4 acts or practices. In addition, defendants have been unjustly
5 enriched as a result of their unlawful practices. Absent
6 injunctive relief by this Court, defendants are likely to
7 continue to injure consumers and harm the public interest.

8
9
10 **THIS COURT'S POWER TO GRANT RELIEF**

11 36. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b),
12 empowers the Court to grant injunctive and other equitable
13 ancillary relief, including consumer redress, disgorgement, and
14 restitution, to prevent and remedy violations of any provision
15 of law enforced by the Commission.

16 37. Section 19 of the FTC Act, 15 U.S.C. § 57b,
17 authorizes this Court to award such relief as is necessary to
18 redress the injury to consumers or others resulting from
19 defendants' violations of the Telemarketing Sales Rule,
20 including the rescission and reformation of contracts and the
21 refund of monies.

22 38. The Court, in the exercise of its equitable
23 jurisdiction, may award other ancillary relief to remedy injury
24 caused by defendants' violations.

1 **PRAYER FOR RELIEF**

2 Wherefore, plaintiff requests that this Court, as
3 authorized by Sections 13(b) and 19 of the FTC Act, 15 U.S.C.
4 §§ 53(b) and 57b, and Section 6(b) of the Telemarketing Act,
5 15 U.S.C. § 6105(b), and pursuant to its own equitable powers:
6

7 1. Award plaintiff such temporary preliminary injunctive
8 and ancillary relief as may be necessary to avert the
9 likelihood of consumer injury during the pendency of this
10 action, and to preserve the possibility of effective final
11 relief;
12

13 2. Permanently enjoin defendants from violating the
14 Telemarketing Sales Rule and the FTC Act, as alleged herein;
15

16 3. Award such relief as the Court finds necessary to
17 redress injury to consumers resulting from defendants'
18 violations of the Telemarketing Sales Rule and the FTC Act,
19 including, but not limited to, rescission of contracts, the
20 refund of monies paid, and the disgorgement of ill-gotten
21 monies; and
22
23
24
25
26

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

4
5 **DATE:** _____, 2001 Respectfully submitted,

6 WILLIAM E. KOVACIC
7 General Counsel

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9 _____
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