

**UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA**

FEDERAL TRADE COMMISSION,)	
600 Pennsylvania Avenue, N.W.)	
Washington, DC 20580,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.
)	
TECHNOBRANDS, INC.,)	
a Virginia corporation,)	
)	
Defendant.)	

COMPLAINT FOR PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF

Plaintiff, the Federal Trade Commission (“Commission”), by its undersigned attorneys, for its complaint alleges:

1. The Commission brings this action under Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), to secure permanent injunctive relief, rescission of contracts, restitution, disgorgement, and other equitable relief for Defendant’s deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over Plaintiff’s claims pursuant to 28 U.S.C.

THE PARTIES

4. Plaintiff **Federal Trade Commission** is an independent agency of the United

DEFENDANT'S COURSE OF CONDUCT

7. From 1997 to 2000, Defendant was engaged in a telemarketing campaign through inbound calls in response to its catalogs, general media advertisements, and direct mail solicitations. As part of that telemarketing campaign, Defendant was a party to a joint sales agreement with one or more third parties to sell buying service memberships under names such as Best Price USA and Triad Discount Buying Service. Defendant's telemarketers obtained credit card information from consumers who purchased its products, and then, promoted the buying service memberships, which is a practice known as "upselling." In its sales pitch for the buying service, Defendant represented that consumers would receive a "no obligation" 30-day membership in the buying service through which they could purchase various goods and services at discount prices.

8. In numerous instances, Defendant did not disclose during these calls that it would transfer the consumer's credit card information to a third party buying service, so that it could charge the consumer's credit card. In addition, Defendant did not disclose, in a manner consumers were likely to notice and understand, that: (a) the buying service would charge the consumer's credit card the annual membership fee of \$72 shortly after the 30-day membership ended, unless the consumer called the buying service within 30 days to cancel the membership; and (b) the buying service would charge the consumer's credit card the annual membership fee every year thereafter, unless the consumer called the buying service to cancel the membership. In many instances, Defendant completely failed to disclose the above facts regarding the terms of the buying service membership.

9. In numerous instances, Defendant announced that it was providing a 30-day membership and sending a membership kit, but did not request the consumer's authorization either to

send the membership kit or to charge the consumer's credit card for the membership. Neither a consumer's willingness to receive a membership kit nor the consumer's failure to object when Defendant announced that it was sending a membership kit constituted authorization to charge the consumer's credit card.

10. If a consumer agreed to accept a 30-day membership, and in many instances, even if a consumer did not agree, Defendant provided the consumer's name and credit card number or other billing information to the buying service, and stated that the consumer had accepted the buying service offer. Shortly after Defendant provided this information to the buying service, the buying service mailed, by third-class bulk mail, a membership kit to the consumer. The kit disclosed that the consumer had to call to cancel the membership to avoid a credit card charge, and the telephone number that the consumer had to call to cancel the membership. However, many consumers did not open these kits because they appeared to be unsolicited promotional or sales materials.

11. Within about 45 days after Defendant provided the consumer's name and billing information to the buying service, the buying service charged the consumer's credit card, unless the consumer had notified the buying service by calling a toll-free number provided only in the membership kit that the consumer wished to cancel the membership. While the buying service's toll-free telephone number appeared on the consumer's credit card statement, along with the charge for the buying service membership, the disclosure comes too late for the consumer to avoid a credit card charge and in many instances may not be noticed.

12. Numerous consumers did not agree to accept 30-day introductory memberships and did not recall receiving necessary information about cancellation.

DEFENDANT'S VIOLATIONS OF THE FTC ACT

COUNT I

13. Since at least 1997, in numerous instances, in connection with the advertising, promotion, marketing, offering for sale, sale, or distribution of buying service memberships, Defendant has represented, expressly or by implication, that consumers who agree to Defendant's offer of a thirty-day trial membership in a buying service incur no obligation to take any action to avoid having their credit cards charged for the membership.

14. In truth and in fact, consumers who agree to the trial offer must call a toll-free telephone number within thirty days to cancel to avoid having their credit cards charged an annual fee for the buying service membership.

15. Therefore, the representations set forth in paragraph 13 are false and misleading and

- B. That a member's credit card is charged a renewal fee each subsequent year unless the member cancels the membership.

These facts would be material to consumers in their decision to accept a trial membership offer or purchase a buying service membership.

18. In light of the representation set forth in paragraph 16, Defendant's failure to disclose or to disclose adequately the material information set forth in paragraph 17 is a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT III

19. Since at least 1997, in numerous instances, in connection with the advertising, promotion, marketing, offering for sale, sale, or distribution of products and buying service memberships, Defendant has represented, expressly or by implication, that only the cost of the products purchased from Defendant will be charged to the consumers' credit card accounts and no other charges to the consumers' credit card accounts will be made without the consumers' further express authorization.

20. In truth and in fact, in numerous instances, in addition to being charged for the cost of products purchased from Defendant, consumers' credit card accounts were charged for the annual cost of buying service memberships without the consumers' further express authorization.

21. Therefore, the representations set forth in paragraph 19 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 IV

22. Since at least 1997, in numerous instances, in connection with the advertising, promotion, marketing, offering for sale, sale, or distribution of various products, Defendant has represented, expressly or by implication, that it is collecting consumers' financial information, such as credit card numbers, to pay for the ordered products.

23. Defendant has failed to disclose to consumers that the consumer's financial information is turned over to a third party that charges the consumer's credit card for a buying service membership. These facts would be material to consumers in their decision to purchase Defendant's products.

24. In light of the representations set forth in paragraph 22, Defendant's failure to disclose the material information set forth in paragraph 23 is a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

CONSUMER INJURY

25. Consumers throughout the United States have suffered and continue to suffer substantial monetary loss as a result of Defendant's unlawful acts or practices. In addition, Defendant has been unjustly enriched as a result of its unlawful acts or practices. Absent injunctive relief by this Court, Defendant is likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

26. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and other ancillary relief, including consumer redress, disgorgement, and restitution, to prevent and remedy any 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:

A. Permanently enjoin and restrain Defendant from engaging or assisting others in engaging in violations of Section 5 of the FTC Act;

B. Award such equitable relief as the Court finds necessary to redress injury to consumers resulting from Defendant's violations of the FTC Act, including, but not limited to, rescission of contracts and restitution, other forms of redress, and the disgorgement of ill-gotten gains;

and

//

//

C. 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: February 14, 2002

Respectfully submitted,

WILLIAM E. KOVACIC
General Counsel

GREGORY A. ASHE
(Va. Bar No. 39131)
JAMES REILLY DOLAN
LOUISE R. JUNG
Federal Trade Commission
600 Pennsylvania Avenue, N.W., Room S-4302
Washington, D.C. 20580
(202) 326-3719 (telephone)
(202) 326-2558 (facsimile)

Attorneys for Plaintiff