

CG

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FEDERAL TRADE COMMISSION,
Plaintiff,

CIVIL ACTION

v.

NO. 00-3281

MERCURY MARKETING OF
DELAWARE, INC., & NEAL D.
SAFERSTEIN,

Defendants.

DEC 30 2003
By MICHAEL J. [Signature] Dep. Clerk

Preliminary Injunction

[REDACTED]

and continue to violate, the Stipulated Final Judgment and Order for Permanent Injunction ("2001 Order") entered by this Court on March 1, 2001.

3 There is good cause to believe that if this Interim Relief is not entered, immediate and

irreparable damage to the Commission's ability to obtain effective final relief for

consumers harmed by the Defendants' violations of the 2001 Order will occur. ~~_____~~

continued violations of the 2001 Order, from the Defendants' billing practices.

IT IS THEREFORE ORDERED that Defendants Neal D. Saferstein and Mercury, whether doing business in the corporate name or doing business under any trade name or other name, including, but not limited to, GoInternet.net, Mercury Internet Services, Mercury

written consent to the purchase of the good and/or service, and the express written

authorization as to the method of payment: and

C. Violating any provision of the FTC's Telemarketing Sales Rule.

IT IS FURTHER ORDERED that Defendants and their successors, assigns, officers, agents, servants, employees and attorneys, and those persons in active concert or participation

shall be held liable for the violation of this Order beginning on the date of the

force and effect.

~~IT IS FURTHER ORDERED~~ that this Court shall retain jurisdiction of this matter for

all purposes.

SO ORDERED, this 29th day of Dec., 2003 at 3P⁰⁰ o'clock.

BY THE COURT:


CLIFFORD SCOTT GREEN, S.J.

CG

53

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FEDERAL TRADE COMMISSION,

:

RECEIVED

v.

:
:
:

NO. 00-3281

JAN 05 2004

EAST CENTRAL
REGION

MERCURY MARKETING OF

:
:
:

FIA

I. BACKGROUND

In June 2000, the Federal Trade Commission filed a complaint alleging that Defendants violated Section 5 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §28, by

unauthorized billing. (Pl. Proposed Findings at 2). On March 1, 2001, this Court entered a

Stipulated Judgment and Order for Permanent Injunction (“2001 Order”) on the “Consent

Presently before the court is FTC's request for injunctive relief to prevent allegedly

~~continued violations of the stipulated judgment and order. The FTC seeks to enjoin Defendants~~

from: (1) Billing consumers without their authorization, using a negative option feature, as that

~~1. 15 U.S.C. § 1401 (FTC); 16 C.F.R. § 16.1 (FTC); 16 C.F.R. § 16.1 (FTC); 16 C.F.R. § 16.1 (FTC)~~

Order, and the likelihood that this fraud will continue until a final resolution of the FTC's present

Defendants contend that the evidence is insufficient to permit the Court to find that there

the parties. Nonetheless, on the temporary injunction hearing record presently before the court there is sufficient evidence to support the finding that the plaintiff has satisfied its burden of persuasion by clear and convincing evidence that the FTC has a reasonable likelihood of success on the merits. There is clear and convincing evidence that defendants' telemarketers purposely mislead consumers into receiving goods and services without clearly disclosing that defendants

have similarly complained. Now, based on thousands of citizen complaints, the FTC seeks to enforce the stipulated order by these contempt proceedings. Clearly the problem is not de minimus as defendants urge.

only in limited circumstances, the evidence of record clearly supports a preliminary injunction to prevent the public from continuing to be deceived and deprived of funds in an unauthorized way. The remedy is appropriate here where: (1) there is high likelihood that Plaintiff will succeed on the merits; (2) the injunction is limited and tailored to prevent the unauthorized conduct of

the status quo. Defendants have proposed certain alternate remedies as appropriate.² The

reinstatement of these proposals by the Court is not appropriate. The Court is not