

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

FEDERAL TRADE COMMISSION,)	
)	
Plaintiff,)	Case No. 6:09-cv-2021-ORL-28-KRS
)	
v.)	Judge Antoon
)	
JPM ACCELERATED SERVICES INC.,)	Magistrate Judge Spaulding
a Florida corporation,)	
)	FIRST AMENDED COMPLAINT
IXE ACCELERATED FINANCIAL)	FOR PERMANENT
CENTERS LLC,)	INJUNCTION AND OTHER
a Florida limited liability company,)	EQUITABLE RELIEF
)	
IXE ACCELERATED SERVICES INC.,)	
a Florida corporation,)	
)	
IXE ACCELERATED SERVICE CENTERS)	
INC., a Florida corporation,)	
)	
MGA ACCELERATED SERVICES INC.,)	
a Florida corporation,)	
)	
WORLD CLASS SAVINGS INC.,)	
a Florida corporation,)	
)	
ACCELERATED SAVINGS INC.,)	
a Florida corporation,)	
)	
B&C FINANCIAL GROUP INC.,)	
a Florida corporation,)	
)	
JEANIE B. ROBERTSON,)	
)	
BROOKE ROBERTSON,)	
)	
IVAN X. ESTRELLA,)	
)	
JAIME M. HAWLEY,)	
)	

KIMBERLY NELSON,)
)
PAIGE DENT,)
)
ALEXANDER J. DENT,)
)
MICHA S. ROMANO,)
)
PAUL PIETRZAK, and)
)
ASHLEY M. WESTBROOK)
)
Defendants.)
_____)

Plaintiff, the Federal Trade Commission (“FTC”), for its Complaint alleges:

1. The FTC brings this action under Sections 13(b) and 19 of the Federal Trade

PLAINTIFF

4. The FTC is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58. The FTC enforces 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 FTC also enforces the Telemarketing Act, 15 U.S.C. §§ 6101-6108. Pursuant to the Telemarketing Act, the FTC promulgated and enforces the TSR, 16 C.F.R. Part 310, which prohibits deceptive and abusive telemarketing acts or practices.

5. The FTC is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act and the TSR and to secure such equitable relief

8. Defendant IXE Accelerated Services Inc. is a Florida corporation with its principal place of business at 927 Fern Street, Altamonte Springs, Florida 32701. IXE Accelerated Services Inc. transacts or has transacted business in this district and throughout the United States.

9. Defendant IXE Accelerated Service Centers Inc. is a Florida corporation with its principal place of business at 810 N. Apollo Boulevard, Melbourne, Florida 32935. IXE Accelerated Service Centers Inc. transacts or has transacted business in this district and throughout the United States.

10. Defendant MGA Accelerated Services Inc. is a Florida corporation with its principal place of business at 1220 Sarno Road, Melbourne, Florida 32935. MGA Accelerated Services Inc. transacts or has transacted business in this district and throughout the United States.

11. Defendant World Class Savings Inc. is a Florida corporation with its principal place of business at 810 N. Apollo Boulevard, Melbourne, Florida 32935. World Class Savings Inc. transacts or has transacted business in this district and throughout the United States.

12. Defendant Accelerated Savings Inc. is a Florida corporation with its principal place of business at 1220 E. Prospect Avenue, Suite 281, Melbourne, Florida 32901. Accelerated Savings Inc. transacts or has transacted business in this district and throughout the United States.

13. Defendant B&C Financial Group Inc. is a Florida corporation with its principal place of business at 812 N. Apollo Boulevard, Melbourne, Florida 32935. B&C Financial Group Inc. transacts or has transacted business in this district and throughout the United States.

14. Defendant Jeanie B. Robertson is the President of JPM Accelerated Services Inc. and the President of IXE Accelerated Service Centers Inc. At times material to this Complaint, acting alone or in concert with others, she has formulated, directed, controlled, had the authority to control, or participated in the acts and practices set forth in this Complaint. Defendant Jeanie B. Robertson resides in this district and, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

15. Defendant Brooke Robertson is the President of B&C Financial Group Inc. At times material to this Complaint, acting alone or in concert with others, she has formulated, directed, controlled, had the authority to control, or participated in the acts and practices set forth in this Complaint. Defendant Brooke Robertson resides in this district and, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

16. Defendant Ivan X. Estrella has been the Manager and an owner of IXE Accelerated Financial Centers LLC. At times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices set forth in this Complaint. Defendant Ivan X. Estrella

United States.

23. Defendant Ashley M. Westbrook is the President of Accelerated Savings Inc. At times material to this Complaint, acting alone or in concert with others, she has formulated, directed, controlled, had the authority to control, or participated in the acts and practices set forth in this Complaint. Defendant Ashley M. Westbrook resides in this district and, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

24. Defendants JPM Accelerated Services Inc., IXE Accelerated Financial Centers LLC, IXE Accelerated Services Inc., IXE Accelerated Service Centers Inc., MGA Accelerated Services Inc., World Class Spas Inc., Accelerated Savings Inc., and B&C Financial Group Inc. (collectively, "Corporate Defendants") have operated as a common enterprise while engaging in the unlawful acts and practices alleged below. Corporate Defendants have conducted the business practices described below through an interrelated network of companies that are commonly controlled, share office space, and commingle funds. Because these Corporate Defendants have operated as a common enterprise, each of them is jointly and severally liable for the acts and practices alleged below. Individual Defendants Jeanie B. Robertson, Brooke Robertson, Ivan X. Estrella, Jaime M. Hawley, Kimberly Nelson, Paige Dent, Alexander Dent, Micha S. Romano, Paul Pietrzak, and Ashley M. Westbrook have formulated, directed, controlled, had the authority to control, or participated in the acts and practices of the Corporate Defendants that constitute the common enterprise.

28. In numerous instances, Defendants guarantee that if consumers do not save

significant reductions in credit card interest rates and minimum savings that were promised during the initial telephone calls, and they typically fail to provide any reduction in consumers' credit card interest rates at all. Consequently, consumers are not able to pay their credit card debts faster than they could without Defendants' program.

33. Despite Defendants' failure to deliver on the promises made to consumers, Defendants rarely refund the fee charged to consumers for purchasing Defendants' credit card interest rate reduction services.

34. While telemarketing their program, Defendants, acting directly or through one or more intermediaries, have made numerous calls to telephone numbers on the National Do Not Call Registry ("Registry"), as well as to consumers who have previously asked Defendants not to call them again. In some instances, Defendants or their telemarketers also "spoof" their calls by transmitting phony Caller ID information so that call recipients do not know the source of the calls.

35. Since at least 2007, Defendants, acting directly or through one or more intermediaries, have made numerous outbound telemarketing calls in which they failed to connect the call to a sales representative within (2) seconds of the call recipient's completed greeting. Instead of connecting the call to a sales representative, Defendants, acting directly or through their telemarketers, have delivered a prerecorded voice message to the call recipient.

36. In numerous instances, Defendants, acting directly or through one or more intermediaries, have initiated telemarketing calls that failed to disclose truthfully, promptly,

rates;

- C. Defendants will enable consumers to pay off their debts much faster, typically three to five times faster, in all or virtually all instances, as a result of lowered credit card interest rates; and
- D. Defendants will provide full refunds if consumers do not save thousands of dollars in a short time as a result of lowered credit card interest rates.

40. In truth and in fact, in numerous instances in which Defendants have made the representations set forth in Paragraph 39 of this Complaint:

- A. Defendants did not substantially lower consumers' credit card interest rates;
- B. Defendants did not save consumers thousands of dollars in a short time as a result of lowered credit card interest rates;
- C. Defendants did not enable consumers to pay off their debts much faster, typically three to five times faster, as a result of lowered credit card interest rates; and
- D. Defendants did not provide full refunds when consumers did not save thousands of dollars in a short time as a result of lowered credit card interest rates.

41. Therefore, Defendants' representations as set forth in Paragraph 39 of this Complaint 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 TELEMARKETING SALES RULE

42. 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. The FTC adopted the original Telemarketing Sales Rule in 1995, extensively amended it in 2003, and amended certain provisions thereafter. 16 C.F.R. Part 310.

43. Defendants are “seller[s]” or “telemarketer[s]” engaged in “telemarketing,”

B. That the purpose of the call is to sell goods or services; and

C. The nature of the goods or services.

16 C.F.R. § 310.4(d)(1), (2), and (3).

2), and (3)b

telephone numbers on the Registry without charge either through a toll-free telephone call or over the Internet at www.donotcall.gov.

51. Since October 17, 2003, sellers and telemarketers have been prohibited from calling numbers on the Registry. 16 C.F.R. § 310.4(b)(1)(iii)(B).

52. Since January 29, 2004, sellers and telemarketers have been prohibited from failing to transmit or cause to be transmitted the telephone number, and, when made available by the telemarketer's carrier, the name of the telemarketer, to any caller identification service in use by a recipient of a telemarketing call. 16 C.F.R. § 310.4(a)(7).

53. 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).

VIOLATIONS OF THE TELEMARKETING SALES RULE

COUNT TWO

Misrepresentations in Violation of the TSR

54. In numerous instances, in the course of telemarketing goods and services, Defendants have misrepresented, directly or by implication, that:

- A. Defendants will substantially lower consumers' credit card interest rates in all or virtually all instances;
- B. Defendants will save consumers thousands of dollars in a short time in all or virtually all instances as a result of lowered credit card interest

rates; and

- C. Defendants will enable consumers to pay off their debts much faster, typically three to five times faster, in all or virtually all instances, as a result of lowered credit card interest rates.

55. Defendants' acts and practices, as described in Paragraph 54 above, are deceptive telemarketing acts or practices that violate the TSR, 16 C.F.R. § 310.3(a)(2)(iii).

COUNT THREE

Refund Misrepresentations in Violation of the TSR

56. In numerous instances, in the course of telemarketing goods and services, Defendants have misrepresented, directly or by implication, that Defendants will provide full refunds if consumers do not save thousands of dollars in a short time as a result of lowered credit card interest rates.

57. Defendants' acts and practices, as described in Paragraph 56 above, are deceptive telemarketing acts or practices that violate the TSR, 16 C.F.R. § 310.3(a)(2)(iv).

COUNT FOUR

Violating the National Do Not Call Registry

58. In numerous instances, in connection with telemarketing, Defendants have engaged, or caused a telemarketer 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 C.F.R. § 310.4(b)(1)(iii)(B).

COUNT FIVE

Failing to Honor Do Not Call Requests

59. In numerous instances, in connection with telemarketing, Defendants have engaged, or caused a telemarketer to engage, in initiating an outbound telephone call to a person who previously has stated that he does not wish to receive an outbound telephone call made by or on behalf of Defendants, in violation of the TSR, 16 C.F.R. § 310.4(b)(1)(iii)(A).

COUNT SIX

Abandoning Calls

60. In numerous instances, in connection with telemarketing, Defendants have abandoned, or caused a telemarketer to abandon, an outbound telephone call by failing to connect the call to a sales representative within two (2) seconds of the completed greeting of the person answering the call, in violation of the TSR, 16 C.F.R. § 310.4(b)(1)(iv).

COUNT SEVEN

Failing to Transmit Caller Identification

61. In numerous instances, in connection with telemarketing, Defendants have failed to transmit, or have caused telemarketers to fail to transmit, the telephone number and name of the telemarketer or of Defendants to any caller identification service in use by a recipient of a telemarketing call, in violation of the TSR, 16 C.F.R. § 310.4(a)(7).

COUNT EIGHT

Failing to Make Required Oral Disclosures

62. In numerous instances, in the course of telemarketing goods and services, Defendants have made or caused telemarketers to make outbound telephone calls in which the telemarketer failed to disclose promptly and in a clear and conspicuous manner to the person receiving the call:

- A. The identity of the seller;
- B. That the purpose of the call is to sell goods or services; or
- C. The nature of the goods or services.

63. Defendants' practice, as alleged in Paragraph 62 above, is an abusive telemarketing practice that violates the TSR, 16 C.F.R. § 310.4(d).

COUNT NINE

Initiating Unlawful Prerecorded Messages

64. In numerous instances, on or after December 1, 2008, in the course of telemarketing goods and services, Defendants have initiated, or caused a telemarketer to initiate, outbound telephone calls delivering prerecorded messages that, in violation of § 310.4(b)(1)(v)(B)(i), do not promptly disclose the identity of the seller, that the purpose of the call is to sell goods or services, or the nature of the goods or services.

CONSUMER INJURY

65. Consumers have suffered and will continue to suffer substantial injury as a result of Defendants' violations of the FTC Act and the TSR. In addition, Defendants have been unjustly enriched as a result of their unlawful acts and practices. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

66. 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 any provision of law enforced by the FTC. The Court, in the exercise of its equitable jurisdiction, may award ancillary relief, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies, to prevent and remedy any violation of any provision of law enforced by the FTC.

67. 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), authorize this Court to grant such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the TSR, including the rescission or reformation of contracts, and the refund of money.

PRAYER FOR RELIEF

Wherefore, Plaintiff FTC, pursuant to Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, and Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b), and the Court's own equitable powers, requests that the 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, an order freezing assets, immediate access, and the appointment of a receiver;

2. Enter a permanent injunction to prevent future violations of the FTC Act and the TSR by Defendants;

3. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act and the TSR, including but not limited to, rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies; and

4. Award Plaintiff the costs of bringing this action, as well as such costs of the TSR, on behalf of the General Trustee;