FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
FEB 25, 2011
JOHN LEY
CLERK

UNITED STATES OF AMER

USA FINANCIAL, LLC,
a Florida Limited Liability C
AMERICAN FINANCIAL CA
a corporation formerly know
JEFFREY R. DEERING, ind
or manager of the above list
RICHARD R. GUARINO, in
or manager of the above list
JOHN F. BUSCHEL, JR., in
or manager of one or both o

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Appeal from the United States District Court
for the Middle District of Florida

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(February 25, 2011)

Before PRYOR, MARTIN, and FAY, Circuit Judges.

PER CURIAM:

USA Financial, LLC, American Financial Card, Inc., f.k.a. Capital Financial, Inc., Jeffrey R. Deering, Richard Guarino, and John F. Buschel, Jr. appeal the grant of summary judgment entered in favor of the 31Ó#P,m

The defendants argue on appeal that the district court erred by: (1) granting summary judgment for the FTC; (2) finding individual liability; (3) granting the FTC's request for a permanent injunction against American Financial; (4) freezing their assets; and (5) awarding consumer redress. After thorough review, we affirm.

I.

Between November 2004 and late 2007, the defendants marketed and sold advance fee credit cards to consumers through telephone solicitations.[1] During the calls, consumers were told that they had been approved for a credit card with a credit limit of $2,000, cash advance capabilities, and a fixed interest rate of 8.9%. Consumers were also told that to open an account they had to pay a one-time fee of $200.

Once consumers agreed to open an account and provided their bank information for payment of the one-time fee, they listened to a recorded "verification script." The record

[M]astercard" and was a "merchant finance account."

Consumers received a thin-plastic card us

unlawful because it created the deceptive impression that it was simply a refund or rebate). The defendants represented that the offered card had the features of a general purpose card. Consumers were told that it had a fixed interest rate, a $2,000 credit limit, and cash advance capabilities. The verification scripts that informed consumers that the credit card being offered was not affiliated with Visa or Mastercard and was a “merchant finance account” failed to dispel the confusion that the defendants’ representations created among reasonable consumers. The overall impression created by the calls was that consumers were receiving a card that could be used to make purchases anywhere.

Our conclusion is bolstered by the Receiver’s finding that less than 3 percent of USA Financial’s 2007 revenues were derived from merchandise sales. The fact that consumers did not purchase the defendant’s products after obtaining their credit cards, which they could use to buy only defendant’s products, suggests that they were actually deceived. While “[p]roof of actual deception is unnecessary to establish a violation of Section 5, such proof

the FTCA § 5 violation be

consideration in advance of obtaining a loan or other extension of credit when the seller or telemarketer has guaranteed or represented a high likelihood of success in obtaining or arranging a loan or other extension of credit for a person." 16 C.F.R. § 310.4(a)(4). Based on the undisputed facts, the defendants violated § 310.4(a)(4) by representing to consumers that they would be approved for a credit card upon paying a $200 advance fee for the card. The district court's grant of summary judgment was not improper.

B.

Defendants Deering, Guarino, and Buschel, Jr. also contend that the district court erred by finding, as a matter of law, that they w[illegible]

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statutes"). In this case, the district court entered a permanent injunction prohibiting the defendants from engaging in conduct that would violate section 5 of the FTCA or any provision of the TSR.

American Financial argues that the district court erred by granting a permanent injunction under § 13(b) based on past violations of the FTCA or TSR that ceased before the FTC brought suit and have not been shown likely to recur. See FTC. v. Evans Products Co., 775 F.2d 1084, 1087–88 (9th Cir. 1985) (holding that a district court may not issue a preliminary injunction under § 13(b) to remedy past violations that have not been shown likely to recur). According to the undisputed facts, American Financial ceased its deceptive practices in late 2007. The FTC's complaint was filed on May 12, 2008. American Financial asserts that the district court failed to make a finding that there was a reasonable likelihood that its violations would recur. Accordingly, American Financial argues that the district court's issuance of a permanent injunction was improper.

In this case, the district court enjoined American Financial from engaging in future violations of the FTCA and TSR even though its unlawful conduct had ceased. Under those circumstances, permanent injunctive relief is appropriate if "the defendant's past conduct indicates that there is a reasonable likelihood of further violations in the future." SEC v. Caterinicchia, 613 F.2d 102, 105 (5th Cir.

1980) (quoting SEC v. Blatt, 583 F.2d 1325, 1334 (5th Cir. 1978)).[4] The district court concluded that permanent injunctive relief was necessary to prevent future violations. The court found that "the transformation of Capital Financial into American Financial, and American Financial's transformation into USA Financial" indicated a reasonable likelihood of future violations. We agree. The defendants' formation of new corporate entities to facilite ag

FTCA, a "district court has the inherent power of a court of equity to grant ancillary relief, including freezing assets and appointing a Receiver." FTC v. U.S. Oil & Gas Corp., 748 F.2d 1431, 1432 (11th Cir. 1984). Congress intended to give district courts "authority to grant any ancillary relief necessary to accomplish complete justice," including freezing assets. Id. at 1434 (quoting FTC v. H.N. Singer, Inc., 668 F.2d 1107, 1113 (9th Cir. 1982)). In this case, the frozen assets were profits from the defendants' illegal activities. Maintaining the asset freeze until the monetary judgment was satisfied was necessary to "accomplish complete justice." See CSC Holdings, Inc. v. Redisi, 309 F.3d 988, 996 (7th Cir. 2002) ("Since the [frozen] assets in question here were profits the [defendants] made by unlawfully stealing [the plaintiff's] services, the freeze was appropriate and may remain in place pending final disposition of the case."). The district court's imposition of the asset freeze was not error.

E.

Finally, the defendants assert in their brief that the district court erred in awarding consumer redress in the amount of $17,300,509.00. However, the defendants fail to explain why the district court's award was erroneous. "We routinely decline to address such cursory arguments, and this case presents no exception." United States v. Belfast, 611 F.3d 783, 821 (11th Cir. 2010); United

States v. Gupta, 463 F.3d 1182, 1195 (11th Cir. 2006) ("We may decline to address an argument where a party fails to provide arguments on the merits of an issue in its initial or reply brief. Without such argument the issue is deemed waived."). We therefore decline to address this issue.

F.

For all of these reasons, we affirm.

AFFIRMED.