

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

FEDERAL TRADE COMMISSION,

Section 5(a) of the Federal Tr

Tel: (216) 263-3413 (de Banate)
Tel: (216) 263-3406 (PANEK)
Tel: (216) 263-3420 (Senturia)
Tel: (216) 263-3435 (Guinto)
Fax: (216) 263-3426
fdebanate@ftc.gov
cpanek@ftc.gov
hsenturia@ftc.gov
nguinto@ftc.gov

Attorneys for Plaintiff
FEDERAL TRADE COMMISSION

GEORGE JEPSEN
Attorney General

Dated: March 15, 2016

/s/ Sandra G. Arenas
Sandra G. Arenas, Bar # CT413640
Assistant Attorney General
110 Sherman Street
Hartford, Connecticut 06105
Tel: (860) 808-5400
Fax: (860) 808-5593
Sandra.Arenas@ct.gov

Attorney for Plaintiff
STATE OF CONNECTICUT

COMMONWEALTH OF PENNSYLVANIA
BRUCE R. BEEMER
FIRST DEPUTY ATTORNEY GENERAL

Dated: March 15, 2016

/s/ Nicole R. DiTomo
Nicole R. DiTomo, PA Bar No. 315325
Deputy Attorney General
Bureau of Consumer Protection
15th Floor, Strawberry Square
Harrisburg, Pennsylvania 17120
Tel: (717) 705-6559
Fax: (717) 705-3795
nditomo@attorneygeneral.gov

Attorney for Plaintiff
COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL

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

FEDERAL TRADE COMMISSION, *et al.*,

Plaintiffs,

v.

CLICK4SUPPORT, LLC, *et al.*,

Defendants.

CIVIL ACTION NO. 15-5777

**MEMORANDUM IN SUPPORT OF PLAINTIFFS’
MOTION FOR LEAVE TO FILE AMENDED COMPLAINT FOR
PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF**

Pursuant to Rule 15, Plaintiffs Federal Trade Commission (“FTC”), State of Connecticut, Office of Attorney General, and Commonwealth of Pennsylvania, Office of Attorney General, (collectively, “Plaintiffs”) move the Court for leave to file the attached Amended Complaint for Permanent Injunction and Other Equitable Relief (“Amended Complaint”).

Based on additional facts and information provided by Defendants’ own filings, testimony, and discovery responses, Plaintiffs seek leave to amend the original Complaint to add three new Defendants and two new counts regarding Defendants’ technical support services scheme. Through the proposed Amended Complaint, Plaintiffs also seek to streamline this action by withdrawing allegations pertaining to civil penalties.

I. PROCEDURAL BACKGROUND

Plaintiffs filed the original Complaint on October 26, 2015, alleging that the original Defendants operated a common enterprise to perpetrate a technical support

technology companies and that they had detected vulnerabilities in consumers' computers, ultimately tricking consumers into purchasing unnecessary computer security or technical support services (collectively, "technical support services"). Plaintiff FTC filed concurrently an *ex parte* motion for a temporary restraining order ("TRO"), submitting substantial supporting evidence.

On October 27, 2015, the Court issued a TRO and scheduled a noticed preliminary injunction ("PI") hearing. The following day, on October 28, Plaintiffs served each Defendant with a summons and the original Complaint, as well as all filings related to the FTC's motion for TRO. On the same day, with permission from the Court-appointed Receiver, Plaintiffs participated in the immediate access of Defendants' business premises in Bensalem, Pennsylvania and Essex, Connecticut.

In advance of the PI hearing, Defendants submitted a number of documents for the Court's consideration, including a motion for live testimony (Doc. 18), a supplemental memorandum of law (Doc. 23), and declarations by Defendants Chetan Bhikhubhai Patel (Doc. 19), Niraj Patel (Docs. 20, 22), George Saab (Doc. 21), and Bruce Bartolotta (Doc. 75), as well as by Abhishek Gagneja (Doc. 76). The FTC responded with a brief and additional exhibits (Docs. 33, 33-1 through 33-5) and filed copies of documents obtained from Defendants' business premises (Docs. 34, 34-1). During the PI hearing on November 9 and 10, Defendants Niraj Patel, Chetan Bhikhubhai Patel, and George Saab testified about their involvement in the scheme (PI Hearing Trs., Docs. 77-78). The Court entered its PI order on November 10, 2015 (Doc. 42).

In December 2015, seven of the original Defendants answered the Complaint (Docs. 66, 69). On December 31, discovery commenced. On January 13, 2016, the Court entered a

scheduling order (Doc. 85), setting March 15, 2016 as the deadline to file amended pleadings. Fact discovery closes on July 1, 2016.

II. THE DEFENDANTS AND THEIR COMMON ENTERPRISE

A. The Defendants

The eight original Defendants include four corporate entities and four individuals. The four original corporate Defendants are Click4Support, LLC (“**C4S-CT**”), Innovazion Inc. (“**Innovazion US**”), Spanning Source LLC (“**Spanning Source**”), and iSourceUSA LLC (“**iSourceUSA**”). The four original individual Defendants are Bruce Bartolotta (“**Bartolotta**”), George Saab (“**Saab**”), Chetan Bhikhubhai Patel (“**C. Patel**”), and Niraj Patel (“**N. Patel**”).

Through the proposed Amended Complaint, Plaintiffs seek to add three new Defendants, one corporate entity and two individuals. The new corporate Defendant is Innovazion Research Private Limited (“**Innovazion India**”). The new individual Defendants are Abhishek Gagneja (“**A. Gagneja**”) and Rishi Gagneja (“**R. Gagneja**”). Innovazion India is a corporation with its principal place of business in New Delhi, India, and it sells technical support services.

A. Gagneja owns Innovazion India and is its chief executive officer. R. Gagneja serves as its director.

As described more fully below, the evidence shows that the Defendants organized themselves into two arms of a common enterprise. Plaintiffs refer to them as the “Provider Defendants” and the “Processor Defendants.” The **Provider Defendants** are Innovazion US, C4S-CT, and Bartolotta, along with new Defendants Innovazion India, A. Gagneja, and R. Gagneja. The Provider Defendants marketed, sold, and fulfilled the technical support services using call centers in India. The **Processor Defendants** are Spanning Source, Saab, C. Patel, N. Patel, and iSourceUSA. The Processor Defendants secured the merchant accounts used to

process consumers' payments for the technical support services, and they fronted for the enterprise to consumers and consumer protectors in the U.S., including law enforcement, so that they could continue their scheme.

B. The Common Enterprise

Through case proceedings and Defendants' own filings, testimony, and -cpscovery

based telemarketers who interacted with U.S. consumers, including the sales personnel and technical support “specialists”;

4. As part of their agreement, A. Gagneja instructed Bartolotta to secure a merchant account to process consumer paymen

9. By agreement among the Defendants, the Processor Defendants reviewed and responded to (a) consumer chargebacks, (b) consumer complaints and refund requests submitted by consumers directly and through the Better Business Bureau, and (c) notices and inquiries from law enforcement agencies, including several attorneys general offices. As noted in the original Complaint, Bartolotta also handled consumer complaints on behalf of the enterprise;

10. By agreement among the Defendants, the Processor Defendants hired at least four “refund clerks” to help deal with the mounting number of consumer complaints and refund requests. Saab personally reviewed and responded to consumer complaints and, according to his

As noted above, he was involved in Defendants' consumer-facing websites and telemarketing force. Moreover, he analyzed consumer complaints, refund requests, and chargebacks generated by the operations. Along with Saab, N. Patel, and C. Patel, he formulated Defendants' "chargeback reduction and business process improvement plan";

14. R. Gagneja is an officer of Innovazion US and Innovazion India. In these capacities, R. Gagneja is knowledgeable of, has the authority to control, and/or participated in Defendants' operations and business practices; and

15. By agreement, Defendants divided among themselves the proceeds generated by their enterprise. Innovazion India, A. Gagneja, and R. Gagneja received millions of dollars of these proceeds through numerous wire transfers initiated by the U.S-based Defendants.

III. THE AMENDED COMPLAINT

The facts and information detailed above warrant adding Innovazion India, A. Gagneja, and R. Gagneja as Defendants in this matter. They also support Plaintiffs' two new counts, as described below.

A. New Count V: Credit Card Laundering, 16 C.F.R. § 310.3(c)

The Processor Defendants' practice of processing consumers' payments related to telemarketing transactions between consumers and the Provider Defendants is also known as "credit card laundering," a deceptive practice prohibited by the Telemarketing Sales Rule ("TSR"), 16 C.F.R. § 310.3(c). The Provider Defendants are also liable under the same TSR provision for causing the Processor Defendants to process such payments and for accessing the credit card system through their affiliation with the Processor Defendants. Plaintiffs allege these violations in new Count V.

B. New Count VI: Assisting and Facilitating, 16 C.F.R. § 310.3(b)

The Processor Defendants’ practices of providing merchant account services, establishing and maintaining U.S. bank accounts, and reviewing and responding to consumer-related issues (*i.e.*, chargebacks, complaints, refund requests, law enforcement notices and inquiries) on behalf of the Provider Defendants—while possessing the requisite knowledge of unlawful telemarketing practices committed by the Provider Defendants (*e.g.*, by reviewing and responding to consumer-related issues)—violate the TSR provision against assisting and facilitating others’ TSR violations, 16 C.F.R. § 310.3(b).³ Plaintiffs allege this violation in new Count VI.

C. Plaintiffs Seek Equitable Monetary Relief.

Finally, Plaintiffs State of Connecticut and Commonwealth of Pennsylvania have decided to remove original Counts VI and VIII and other references in the original Complaint pertaining to civil penalties in order to clarify further that Plaintiffs do not seek such relief. As noted, Plaintiffs remain focused on obtaining equitable monetary relief in this matter, including restitution for the thousands of consumer victims in this case and the disgorgement of Defendants’ ill-gotten gains.

³ In order to show the “substantial assistance or support” required under this TSR provision:

The FTC must identify something more than ‘casual or incidental’ help to the telemarketer, but does not have to show a ‘direct connection’ between the assistance and the misrepresentation for an entity to be liable.... Here, providing [the other defendants] with two merchant accounts was essential to the success of the scheme. Absent these accounts, the [other defendants] would have been unable to process credit card payments. Thus, as a matter of law, [the defendant] substantially assisted the [other defendants].

FTC v. HES Merch. Servs. Co., Case No: 6:12-cv-1618-Orl-22KRS, 2014 U.S. Dist. LEXIS 171292, at * 22-23 (M.D. Fla. Nov. 18, 2014).

IV. LEGAL STANDARD AND ARGUMENT

Rule 15 provides that “a party may amend its pleading [with] the court’s leave” and that “[t]he court should freely give le

The Amended Complaint also seeks to add two new counts based on conduct and practices that the original Defendants and new Defendant A. Gagneja (who controls new Defendant Innovazion India) have admitted in their own court filings, testimony, and discovery responses. The Amended Complaint also removes allegations pertaining to civil penalties; this would further clarify the equitable nature of the monetary relief that Plaintiffs seek, ultimately preserving both judicial and litigation resources.

There is no undue delay, bad faith, or dilatory motive by Plaintiffs. Plaintiffs seek to file the Amended Complaint within the time allowed by the Court to file amended pleadings, (Doc. 85), and it is supported by facts and information uncovered by Plaintiffs and provided by Defendants.

Moreover, there will be no substantial or undue prejudice to the original Defendants. The

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Defendants have admitted and based on facts and information received, to a large extent, from the Defendants themselves. Given that discovery will continue for a few more months, the time is ripe for the parties to develop these facts and narrow the issues for litigation.

Finally, there will be no futility resulting from Plaintiffs' Amended Complaint. In the context of a motion to amend, "[f]utility' means that the complaint, as amended, would fail to state a claim upon which relief could be granted." *In re Burlington Coat Factory Sec. Litig.*, 114 F.3d 1410, 1434 (3d Cir. 1997). Therefore, the court may refuse to allow an amendment that

Respectfully Submitted,

Dated: March 15, 2016

/s/ Fil M. de Banate
Fil M. de Banate, OH Bar # 86039
One of the Attorneys for Plaintiff
FEDERAL TRADE COMMISSION

/s/ Sandra G. Arenas
Sandra G. Arenas, Bar # CT413640
Attorney for Plaintiff
STATE OF CONNECTICUT

/s/ Nicole R. DiTomo
Nicole R. DiTomo, PA Bar No. 315325
Attorney for Plaintiff
COMMONWEALTH OF PENNSYLVANIA
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**ORDER GRANTING PLAINTIFFS’ MOTION FOR LEAVE TO FILE AMENDED
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AND NOW, on this ____ day of _____, 2016, upon consideration of
Plaintiffs’ Motion for Leave to File Amended Complaint for Permanent Injunction and Other
Equitable Relief, it is hereby ORDERED that Plaintiffs’ Motion is GRANTED.

BY THE COURT:

Stewart Dalzell, J.