

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

FEDERAL TRADE COMMISSION, and
COMMONWEALTH OF PENNSYLVANIA,
by ATTORNEY GENERAL JOSH SHAPIRO,

Plaintiffs,

v.

AMERICAN FUTURE SYSTEMS, INC., a
corporation, also d/b/a/Progressive Business

Public News, 500 Progress Business Publications, Inc., a corporation, et al. (Docket No. 20-1003) (1/21/21) (TCS) (NO) (C) (TW) (H) (S)

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1. The FTC brings this action under Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), and the Unordered Merchandise Statute, 39 U.S.C. § 3009, to obtain permanent injunctive relief, rescission or reformation of contracts, restitution, the refund of monies paid, disgorgement of ill-gotten monies, and other equitable relief for Defendants’ acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the Unordered Merchandise Statute, in connection with Defendants’ deceptive selling of and collection of payment for publication subscriptions.

2. The Commonwealth brings this action pursuant to § 201-4 of the Pennsylvania Unfair Trade Practices and Consumer Protection Law (“UTPCPL”) to restrain, by temporary or permanent injunction, any unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce declared unlawful by § 201-2(4)(i) through (xxi) of the UTPCPL and to obtain restitution and other relief, as this Court deems appropriate, pursuant to 73 P.S. § 201-1, *et seq.*

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345.

4. Venue is proper in this District under 28 U.S.C. § 1391(b)(2), (b)(3), (c)(2) and 15 U.S.C. § 53(b).

5. The Court has supplemental jurisdiction over the Commonwealth’s claims pursuant to 28 U.S.C. § 1367.

PLAINTIFFS

6. 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 Unordered Merchandise Statute, 39 U.S.C. § 3009.

7. The FTC is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act and the Unordered Merchandise Statute and to secure such equitable relief as may be appropriate in each case, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies. 15 U.S.C. § 53(b), 39 U.S.C. § 3009.

8. The Commonwealth of Pennsylvania, through its Attorney General, is authorized to initiate proceedings in the public interest to restrain unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce, seek restitution, and obtain any other relief, as this Court deems appropriate. 73 P.S. § 201-1, *et seq.*

DEFENDANTS

9. Defendant American Future Systems, Inc., also doing business as Progressive Business Publications, Progressive Business Publications, Inc., and Center for Education & Employment Law (“AFS”), is a Pennsylvania corporation, incorporated in March 1973, with its principal place of business at 370 Technology Drive, Malvern, Pennsylvania. AFS transacts or has transacted business in this District and throughout the United States.

10. Defendant Progressive Business Publications of New Jersey, Inc., also doing business as Progressive Business Publications, Progressive Business Publications, Inc., and Center for Education & Employment Law (“PBPNJ”), is a New Jersey corporation, incorporated in September 2005, with its headquarters or principal place of business at 370 Technology Drive, Malvern, Pennsylvania. PBPNJ transacts or has transacted business in this District and throughout the United States.

11. Defendant Edward M. Satell is the Chief Executive Officer and sole owner of AFS and PBPNJ. At all 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 of AFS and PBPNJ, including the acts and practices set forth in this Complaint. Defendant Satell, in connection with the matters alleged herein, transacts or has transacted business in this District and throughout the United States.

12. Together, AFS, PBPNJ, and Satell shall be referred to as “the AFS Defendants.”

13. Defendant International Credit Recovery, Inc., also doing business as ICR (“ICR”), is a company with its principal place of business at 300 Main Street, Vestal, New York. ICR registered as a domestic business corporation with the state of New York in 1991, but has not had a valid corporate registration with the state of New York since 2004. At the present time, it does not maintain a valid corporate registration in any state. Despite not having a valid corporate registration, ICR continues its operations as a collection agency, continues to operate its premises, and holds itself out as a corporation. ICR transacts or has transacted business in this District and throughout the United States.

14. Defendant Richard Diorio Jr. is the Vice President of ICR. At all 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 of ICR, including the acts and practices set forth in this Complaint. Defendant Diorio, in connection with the matters alleged herein, transacts or has transacted business in this District and throughout the United States.

15. Defendant Cynthia Powell is the manager of ICR. At all 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 of ICR, including the acts and practices set forth in this Complaint. Defendant Powell, in connection with the matters alleged herein, transacts or has transacted business in this District and throughout the United States.

16. Together, ICR, Diorio, and Powell shall be referred to as “the ICR Defendants.”

COMMON ENTERPRISE

17. Defendants AFS and PBPNJ (collectively, “AFS Corporate Defendants”) have operated as a common enterprise while engaging in the unlawful acts and practices alleged below. The AFS Corporate Defendants have conducted the business practices described below through interrelated companies that have common ownership, officers, addresses, and business functions. Because the AFS Corporate Defendants have operated as a common enterprise, each of them is jointly and severally liable for the acts and practices alleged below. Defendant Satell has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of the AFS Corporate Defendants that constitute the common enterprise.

COMMERCE

18. At all times material to this Complaint, Defendants have maintained a substantial course of trade in or affecting commerce, as “co

Progressive Business Publications or Progressive Business Publications, Inc., (“PBP”) (newsletters) or the Center for Education & Employment Law (“CEEL”) (newsletters and books). Each newsletter and book focuses on a specific topic, such as human resources, environmental compliance, or employment law. The AFS Defendants typically charge several hundred dollars for a PBP newsletter annual subscription or for the CEEL newsletter annual subscription with accompanying book.

20. The AFS Defendants contact the organizations via unsolicited telephone calls. If the AFS Defendants reach the organization’s reception desk, the AFS Defendants do not disclose that they are selling subscriptions, but instead te

26. Consumers also complain that their cancellation requests are ignored and that the AFS Defendants claim to not have received their book returns.

27. Around 1998, the Better Business Bureau (“BBB”) placed an alert on AFS’s publicly-available BBB profile, which remains ther

31. The AFS Defendants have known for years of a pattern of complaints against them regarding subscriptions that were never ordered, yet continue their nationwide scheme. Except for a period of time during which AFS changed the wording on its mailings due to a settlement in 1995 with the United States Postal Service, business4.6 Td4 (Docum-4 751)6.5 (t)(public27.76s,6 Tw m

stated specifically that consumers advised the BBB that they had not ordered any publications from the AFS Defendants and therefore did not owe the debt that ICR was attempting to collect.

Defendants' debts. The ICR Defendants did not talk with the AFS Defendants about the meeting and did not conduct any further investigation or due diligence into the AFS Corporate Defendants. The ICR Defendants have not changed their collection practices as a result of the meeting.

47. The ICR Defendants do not review, compile data on, or convey to the AFS Defendants the reasons that consumers refuse to pay ICR on their alleged AFS Corporate Defendants' debts.

48. In numerous instances, the ICR Defendants continue collection efforts even after consumers challenge the legitimacy of the purported debts, telling consumers that the AFS Corporate Defendants had told the consumer that the subscription would be for one year if not cancelled within a certain time period and that the employee's birthdate and email address were

letter to the “voluminous complaints that have been lodged against ICR and PBP for similar deceptive trade practices.” Satell served as AFS’s chief witness in its failed defamation lawsuit against the BBB, which was based on the BBB alert about AFS. Satell also was a defendant in a case brought by the United States Postal Service (“USPS”), in which the USPS alleged his involvement in a scheme in which AFS employees sent unsolicited invoices to businesses for publication subscriptions and for publications that were offered as free issues. As part of the settlement in that case, Satell and AFS agreed to revise the wording in their mailings for a specific period. That period has ended and the revisions no longer appear in the AFS Defendants’ mailings.

50. Defendant Powell started at ICR as a collector in the 1990s and became the manager within several years. She also performs

60. Therefore, the AFS Defendants' representation as set forth in Paragraph 58 is false or misleading and constitutes deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

Count IV
AFS Defendants' Sending and Billing for Unordered Merchandise
(By Plaintiff Federal Trade Commission)

69. In numerous instances, in connection with the marketing of newsletters and books, the AFS Defendants, who are not charitable organizations soliciting contributions, have shipped newsletters and books without the prior express request or consent of the recipients, and without identifying the merchandise as free samples.

70. In numerous instances, in connection with the marketing of newsletters and books, the AFS Defendants have sent to the recipients of such merchandise one or more bills or dunning communications for such goods.

71. Therefore, the AFS Defendants' acts or practices, as set forth in Paragraphs 69-

of the UTPCPL are declared unlawful, and whenever the Attorney General has reason to believe that any person is using or is about to use any method, act, or practice declared unlawful, Section 201-4 of the UTPCPL authorizes the Attorney General to bring an action against such person to restrain these methods, acts, or practices.

75. The acts and practices described below constitute unfair methods of competition or unfair or deceptive acts or practices, as prohibited by Section 201-3 of the UTPCPL as defined

- iv. that no purchase or payment is necessary to be able to win a prize or participate if a prize promotion is offered..., 73 P.S. § 201-2(4)(xvii);
and
- e. Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding, 73 P.S. § 201-2(4)(xxi).

Count V
AFS Defendants' Deceptive Misrepresentations
(By Plaintiff Commonwealth of Pennsylvania)

76. In numerous instances, in the course of advertising, marketing, promoting, offering for sale, and selling newsletters and other publications, the AFS Defendants represent, directly or indirectly, expressly or by implication, that consumers will receive publications for free with no risk.

77. In truth and in fact, in numerous instances in which the AFS Defendants have made the representation in Paragraph 76, consumers do not receive publications for free with no risk.

78. The AFS Defendants have therefore engaged in unfair or deceptive acts or practices in violation of 73 P.S.

80. In numerous instances in which the AFS Defendants make the representation set forth in Paragraph 79, the AFS Defendants fail to disclose or disclose adequately to consumers material terms and conditions of the offer, including:

- a. That consumers must cancel before a trial period ends to avoid charges for publication subscriptions;
- b. That consumers must return books and newsletters to avoid charges for publication subscriptions;
- c. That acceptance of the offer will financially bind the consumer;
- d. That Defendants will automatically enroll consumers in continuity plans; and
- e. The steps consumers must take to cancel the continuity plans to avoid additional charges.

81. In other instances, the AFS Defendants do not in the initial telephone call at the outset clearly and affirmatively state the identity of AFS as the sellers; instead, the caller claims to be from the publication being offered.

82. Also in other instances, the AFS Defendants do not in the initial telephone call at the outset clearly and affirmatively state that the purpose of the call is to sell the newsletter or other publications; instead they indicate they have some information they want to discuss or send.

83. The AFS Defendants have therefore engaged in unfair or deceptive acts or practices in violation of 73 P.S. § 201-3 and defined by 73 P.S. § 201-2(4)(ii), (iii), (v), (xvii) and (xxi).

Count VII
ICR Defendants' False, Misleading, Deceptive or Unsubstantiated Representations to Induce Payment
(By Plaintiff Commonwealth of Pennsylvania)

84. Through the means described in Paragraphs 32-48, the ICR Defendants represent, directly or indirectly, expressly or by implication, that (a) the AFS Defendants' debts are valid; (b) consumers have a legal obligation to pay the AFS Defendants' debts; and (c) failure to pay will result in a negative impact on a credit rating or will result in legal action.

85. In truth and in fact, in numerous instances in which the ICR Defendants make the representations set forth in Paragraph 84, these representations are false, misleading, deceptive, or are not substantiated at the time the representations are made.

86. The ICR Defendants have therefore engaged in unfair or deceptive acts or practices in violation of 73 P.S. § 201-3 and defined by 73 P.S. § 201-2(4)(ii), (iii), (v), and (xxi).

Count VIII
AFS Defendants' Sending and Billing for Unordered Merchandise
(By Plaintiff Commonwealth of Pennsylvania)

87. The Unordered Merchandise Statute, 39 U.S.C. § 3009, generally prohibits sending unordered merchandise, unless such merchandise is clearly and conspicuously marked as a free sample, or is sent by a charitable organization soliciting contributions. The statute also prohibits sending consumers dunning communications or bills for unordered merchandise.

88. The Unordered Merchandise Statute further generally provides that any merchandise mailed in violation of that law may be treated as a gift by the recipient who shall have the right to retain, use, discard, or dispose of it in any manner he sees fit without any obligation whatsoever to the sender. 39 U.S.C. § 3009(b).

89. In numerous instances, in connection with the marketing of newsletters and other publications, the AFS Defendants, none of which is a charitable organization soliciting

contributions, have shipped newsletters and publications without the prior express request or consent of the recipients, and without identifying the merchandise as free samples.

90. In numerous instances, in connection with the marketing of newsletters and other publications, the AFS Defendants have sent to the recipients of such merchandise one or more bills or dunning communications for such goods.

91. Therefore, the AFS Defendants' acts or practices as set forth in Paragraphs 89-90 violated the Unordered Merchandise Statute. 39 U.S.C. § 3009.

92. Because of that violation, consumers were entitled to treat the newsletters or other publications as gifts, without any obligation to the AFS Defendants.

93. The AFS Defendants nonetheless sought payment for that merchandise, thereby misleading consumers.

94. Further, by misrepresenting, directly or indirectly, expressly or by implication, compliance with the Unordered Merchandise Statute, the AFS Defendants misrepresented, directly or indirectly, expressly or by implication, the legality of their business practices.

95. The AFS Defendants have therefore engaged in unfair or deceptive acts or practices in violation of 73 P.S. § 201-3 and defined by 73 P.S. § 201-2(4)(ii), (iii), (v), and (xxi).

CONSUMER INJURY

96. Consumers are suffering, have suffered, and will continue to suffer substantial injury as a result of Defendants' violations of the FTC Act, the Unordered Merchandise Statute, and the UTPCPL. In addition, Defendants have been unjustly enriched as a result of their unlawful acts or 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

97. 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.

98. Pursuant to 28 U.S.C. § 1367, this Court has supplemental jurisdiction over Plaintiff Commonwealth's claims based on the UTPCPL, and the Court may award relief under UTPCPL pursuant to 73 P.S. § 201-1, *et seq.*

PRAYER FOR RELIEF

Wherefore, Plaintiffs, the FTC and the Commonwealth, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), the Unordered Merchandise Statute, 39 U.S.C. § 3009, the UTPCPL, 73 P.S. § 201-1, *et seq.*, and the Court's own equitable powers, request that the Court:

- A. Enter a permanent injunction to prevent future violations of the FTC Act, the Unordered Merchandise Statute, and the UTPCPL by Defendants;
- B. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act, the Unordered Merchandise Statute and the UTPCPL, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies; and
- C. Award Plaintiffs FTC and the Commonwealth the attorney fees and costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

Respectfully submitted,

ALDEN F. ABBOTT
General Counsel

Dated: July 23, 2020

/s/ Amy Hocevar

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