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CLERK, US DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA, FLORIDA

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

_____)
FEDERAL TRADE COMMISSION,)

Plaintiff,)

v.)

USA FINANCIAL, LLC, a Florida Limited)
Liability Company,)

AMERICAN FINANCIAL CARD, INC.,)
formerly known as CAPITAL FINANCIAL,)
INC., a corporation,)

JEFFREY R. DEERING, individually and as)
owner, officer, or manager of the)
above-listed corporations,)

RICHARD R. GUARINO, individually and as)
owner, officer, or manager of the)
above-listed corporations, and)

JOHN F. BUSCHEL, Jr., individually and as)
owner, officer, or manager of one or both of)
the above-listed corporations,)

Defendants.)
_____)

Case No. 8:08-cv-899-T-17MAP

**COMPLAINT FOR PERMANENT
INJUNCTION AND OTHER
EQUITABLE RELIEF**

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 Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, and the Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing Act"), 15 U.S.C. §§ 6101 - 6108, to obtain temporary, preliminary, and permanent injunctive relief, rescission or reformation of

contracts, restitution, 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 in violation of the FTC's Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a), 53(b), 57b, 6102(c), and 6105(b).

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

PLAINTIFF

4. Plaintiff, the FTC, is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58. The FTC is charged, *inter alia*, with enforcement of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair and deceptive acts or practices in or affecting commerce. The FTC is also charged with enforcement of 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. 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 as may be appropriate in each case, including restitution and disgorgement. 15 U.S.C. §§ 53(b), 57b, 6102 (c), and 6105(b).

DEFENDANTS

5. Defendant USA Financial, LLC, ("USA Financial") is a Florida Limited Liability Company with its principal place of business at 1800 Drew Street, Clearwater, FL 33755. USA Financial transacts or has transacted business in this District.

6. Defendant American Financial Card, Inc., formerly known as Capital Financial, Inc., (“American Financial”) is a Florida corporation with its principal place of business at 2480 East Bay Drive, #28, Largo, FL 33771. American Financial transacts or has transacted business in this District.

7. Defendant Jeffrey R. Deering (“Deering”) is an owner, officer, or manager of USA Financial and American Financial (“corporate Defendants”). In connection with the matters alleged herein, he resides or has transacted business in this District. At all times material to this complaint, acting alone or in concert with others, he has formulated, directed, controlled, or participated in the acts and practices of the corporate Defendants, including the acts and practices set forth in this complaint.

8. Defendant Richard R. Guarino (“Guarino”) is an owner, officer, or manager of the corporate Defendants. In connection with the matters alleged herein, he resides or has transacted business in this District. At all times material to this complaint, acting alone or in concert with others, he has formulated, directed, controlled, or participated in the acts and practices of the corporate Defendants, including the acts and practices set forth in this complaint.

9. Defendant John F. Buschel, Jr. (“Buschel”) is an owner, officer, or manager of one or both of the corporate Defendants. In connection with the matters alleged herein, he resides or has transacted business in this District. At all times material to this complaint, acting alone or in concert with others, he has formulated, directed, controlled, or participated in the acts and practices of one or both of the corporate Defendants, including the acts and practices set forth in this complaint.

DEFENDANTS' BUSINESS ACTIVITIES

10. Defendants are sellers of advance-fee credit cards to consumers. They are also telemarketers that initiate outbound telephone calls to consumers in the United States to induce the purchase of USA Financial's and American Financial's advance-fee credit cards.

11. Defendants have engaged in telemarketing by a plan, program, or campaign conducted to induce the purchase of goods or services by use of one or more telephones and which involves more than one interstate telephone call.

12. At all times relevant to this complaint, Defendants have maintained a substantial course of trade or business in the offering for sale and sale of goods or services via the telephone, in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

13. Since at least 2004, Defendants, acting alone or in concert with others, have solicited consumers throughout the United States by telephone and falsely promised to provide unsecured, general-purpose credit cards to consumers in exchange for an advance fee or other consideration, typically in the amount of \$200.

14. Defendants' telemarketers call consumers by telephone and promise them a general-purpose credit card that purports to carry a \$2,000 credit limit, cash advances up to \$1,000, and a fixed interest rate. In return, consumers are told that they must pay \$200 to receive and use their credit card.

15. In connection with taking applications over the telephone, Defendants induce consumers to divulge their checking account information, including their name as it appears on the account, and their account number. Defendants then routinely debit the bank accounts of consumers shortly after obtaining consumers' checking account information and in advance of

providing those customers with the general-purpose credit card promised during the telephone calls.

16. After debiting the advance fees from consumers' bank accounts, Defendants do not provide consumers with the promised general-purpose credit card.

17. Instead of providing consumers with the promised general-purpose credit card, Defendants typically provide consumers with a packet of materials, including a thin plastic card imprinted with the words "American Financial Card" or "Capital Financial Card," that can only be used to purchase items from one or two catalogs supplied by Defendants. Defendants also send consumers four \$50 "vouchers," which Defendants claim can be applied to future purchases.

18. Only after receiving these materials do consumers discover that their credit card is nothing more than a catalog card, the purchasing power of which is limited to a discrete selection of items from the catalog or catalogs.

19. In addition, after receipt of the packet of materials, consumers learn for the first time that their \$200 payment is non-refundable and will be applied to the cost of their purchases from the catalog after the consumers pay a 35% cash down payment for merchandise they purchase.

20. Many consumers attempt to cancel their order once they review the packet of materials sent by Defendants. Many consumers have difficulty contacting Defendants to cancel and are often frustrated because they are unable to find a contact number or their requests go unanswered. Other consumers who are able to contact Defendants find their refund requests summarily denied, or are told they are not entitled a refund. Some consumers obtain refunds, but only after complaining to the Better Business Bureau or to a government agency.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

21. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits “unfair or deceptive acts or practices in or affecting commerce.”

Count I

22. In numerous instances in connection with the marketing of advance-fee credit cards, Defendants represent, directly or indirectly, expressly or by implication, that, after paying a fee, consumers will, or are highly likely to, receive a general-purpose credit card.

23. In truth and in fact, in numerous instances in which Defendants have made the representation above, after paying a fee, consumers do not receive a general-purpose credit card.

24. Therefore, Defendants’ representation as set forth in Paragraph 22 of this Complaint is false and misleading and constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

VIOLATIONS OF THE TELEMARKETING SALES RULE

25. 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, in 1994. On August 16, 1995, the FTC adopted the Telemarketing Sales Rule (the “Original TSR”), 16 C.F.R. Part 310, which became effective on December 31, 1995. On January 29, 2003, the FTC amended the Original TSR by issuing a Statement of Basis and Purpose and the final amended Telemarketing Sales Rule (the “TSR”). 68 Fed. Reg. 4580, 4669.

26. Defendants are “sellers” or “telemarketers” engaged in “telemarketing,” as defined by the TSR, 16 C.F.R. § 310.2(z), (bb), and (cc).

27. The TSR prohibits sellers and telemarketers from misrepresenting, directly or by implication, in the sale of goods or services any material aspect of the performance, efficacy,

nature, or central characteristics of goods or services that are the subject of a sales offer. 16 C.F.R. § 310.3(a)(2)(iii).

28. It is an abusive telemarketing act or practice and a violation of the TSR for any seller or telemarketer to request or receive payment of any fee or 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).

29. 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).

Count II

Misrepresenting Material Aspects of the Performance, Efficacy, Nature, or Central Characteristics of Goods

30. In numerous instances, in the course of telemarketing advance-fee credit cards, Defendants have misrepresented, directly or by implication, material aspects of the performance, efficacy, nature, or central characteristics of the credit cards they sell, including that the credit card is a general-purpose credit card rather than a card that can be used to purchase items only from Defendants' catalog.

31. Defendants' practice as alleged in Paragraph 30 is a deceptive telemarketing practice that violates Section 310.3(a)(2)(iii) of the TSR, 16 C.F.R. § 310.3(a)(2)(iii).

Count III

Telemarketing Advance-Fee Credit Cards

32. In numerous instances, in connection with the telemarketing of advance-fee credit cards, Defendants have requested or received payment of a fee or consideration in advance of consumers obtaining a credit card when Defendants have guaranteed or represented a high likelihood of success in obtaining or arranging for the acquisition of a credit card for such consumers.

33. Defendants' practice as alleged in Paragraph 32 is an abusive telemarketing act or practice that violates Section 310.4(a)(4) of the TSR, 16 C.F.R. § 310.4(a)(4).

CONSUMER INJURY

34. Consumers in the United States have suffered and will continue to suffer 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 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

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

36. 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 rescission and reformation of contracts, and the refund of money.

PRAYER FOR RELIEF

Wherefore, Plaintiff Federal Trade Commission, 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:

A. 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 permanent injunctions, appointment of a receiver, immediate access, and an order freezing assets;

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

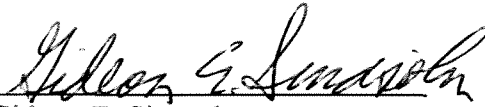
C. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act and the TSR, including but not limited to, rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies; and

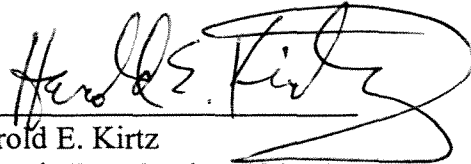
D. Award Plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

Respectfully submitted,

WILLIAM BLUMENTHAL
General Counsel

DATED May 12, 2008


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