UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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FEDERAL TRADE COMMISSION,

Plaintiff,

v.

COMPLAINT

DIAMOND PHONE CARD, INC.;
NASREEN GILANI, individually and as
an officer of Diamond Phone Card, Inc.; and
SAMSUDDIN PANJAWANI, individually
and as a manager of Diamond Phone Card, Inc.,

Defendants.

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COMPLAINT FOR PERMANENT INJUNCTION
AND OTHER EQUITABLE RELIEF

Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), for its complaint against defendants Diamond Phone Card, Inc., Nasreen Gilani, and Samsuddin Panjawani (collectively "Defendants") alleges:

INTRODUCTION

1. This case concerns Defendants' deceptive marketing of prepaid telephone calling cards in violation of the Federal Trade Commission Act, 15 U.S.C. § 41, *et seq.* ("FTC Act"). As explained below, Defendants have deceived consumers, many of whom are recent immigrants, by: (1) misrepresenting the number of calling minutes consumers could obtain using prepaid calling cards created and/or distributed by Defendants, and (2) failing to disclose, or disclose adequately, fees that had the effect of reducing the number of calling minutes available to consumers using prepaid calling cards created and/or distributed by Defendants.

2. The Commission brings this action under Section 13(b) of the FTC Act, 15 U.S.C.

§ 53(b), to obtain permanent injunctive relief against Defendants to prevent them from engaging in deceptive and unfair acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and to obtain other equitable relief, including rescission of contracts, restitution, and disgorgement, as is necessary to redress injury to consumers and the public interest resulting from Defendants' violations of the FTC Act.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this matter pursuant to 15 U.S.C. §§ 45(a) and 53(b), and 28 U.S.C. §§ 1331, 1337(a), and 1345.

4. Venue in the United States District Court for the Eastern District of New York is proper under 15 U.S.C. § 53(b), and 28 U.S.C. §§ 1391(b) and (c).

PLAINTIFF

5. Plaintiff, the FTC, is an independent agency of the United States Government created by statute. 15 U.S.C. § 41, *et seq*. The FTC enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits deceptive or unfair acts or practices in or affecting commerce. The FTC is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act and to secure such other equitable relief as may be appropriate in each case, including restitution and disgorgement. 15 U.S.C. § 53(b).

DEFENDANTS

6. Defendant Diamond Phone Card, Inc. ("Diamond") is a New York corporation located at 87-20 Queens Boulevard, Elmhurst, New York 11373. Diamond was incorporated in January 1997. Diamond created, promoted, sold, and distributed prepaid telephone calling cards to consumers through its distributor network and retail outlets. Diamond transacts or has transacted business in this District.

7. Defendant Nasreen Gilani is the owner and Chief Executive Officer of Diamond. Individually or in concert with others, she formulated, directed, controlled, had the authority to control, or participated in the acts and practices of Diamond, including the acts and practices alleged in this complaint, and has done so at all times pertinent to this action. Gilani transacts or has transacted business in this District.

8. Defendant Samsuddin Panjawani is a manager of Diamond. In some instances he held himself out as Diamond's President or Secretary. Individually or in concert with others, he formulated, directed, controlled, had the authority to control, or participated in the acts and practices of Diamond, including the acts and practices as set forth in this complaint, and has done so at all times pertinent to this action. Panjawani transacts or has transacted business in this District.

COMMERCE

9. At all times relevant to this complaint, Defendants have maintained a substantial course of trade in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS' BUSINESS PRACTICES

10. Since at least 1997, Defendants created and/or promoted prepaid calling cards, which they distributed to sub-distributors and retailers primarily in New York, but also throughout the country, including in New Jersey, Connecticut, Virginia, Minnesota, Georgia, and Texas.

11. A prepaid calling card is a retail product for which the purchaser pays a specific dollar amount and which enables the purchaser to make domestic or international telephone calls.

12. A wide variety of consumers purchase prepaid calling cards. Prepaid calling cards

are especially popular with members of immigrant communities, many of whom depend on prepaid calling cards to stay in touch with family and friends outside of the United States.

13. Defendants' prepaid calling cards were typically sold in denominations of $2.00 and $5.00. They were often sold at newsstands, and in grocery and convenience stores.

14. Since at least 1997, Defendants distributed hundreds of millions of dollars worth of prepaid calling cards, including their own brands and brands of other prepaid calling card distributors.

15. Defendants did not provide the telecommunications service for their prepaid calling cards. Instead, it was provided by third-party telecommunications service providers.

MARKETING

16. Defendants marketed and distributed cards under a variety of brand names, including, but not limited to, "Ooops," "DJ," "Ñ, " "R," "Karive," and "Remolacha."

17. Defendants frequently marketed these calling cards for international use to a panoply of international destinations, including El Salvador, Mexico, India, Pakistan, the Dominican Republic, and Guatemala.

18. Defendants primarily advertised prepaid calling cards to consumers through posters they distributed to sub-distributors and to retail stores. In some instances, Defendants also advertised on local television and radio stations.

19. In some instances, Defendants designed and printed the posters used to market the prepaid calling cards they distributed.

20. A typical poster for cards distributed by Defendants included the name of the prepaid calling card (*e.g.*, "Ooops"), Diamond's name and logo, and representations about the number of calling minutes a consumer would receive to various countries and/or cities.

21. The posters typically touted the number of calling minutes the advertised prepaid calling cards offered to specified destinations through the display of large and colorful text "bubbles," each of which contained the name of a particular calling destination and a representation as to the number of calling minutes a consumer would receive to that destination using the advertised prepaid calling card of a specified dollar value (*e.g.* 136 minutes to El Salvador per $5 card).

22. In numerous instances, the text bubbles touting the calling minutes to particular destinations were in a relatively large font size and were emphasized through the use of color and placement on the posters.

23. In numerous instances, in addition to such text bubbles, the posters contained a table listing various other calling destinations, along with representations about the number of calling minutes a consumer would receive to those destinations using the advertised calling card of a specified dollar value.

24. In numerous instances, the font size of the table, though not as large as the text bubbles, was also printed in a prominent and legible manner.

25. In numerous instances, such posters contained vague disclosures about fees in approximately ten-point font on the bottom of the posters. For example, one of Defendants' posters stated:

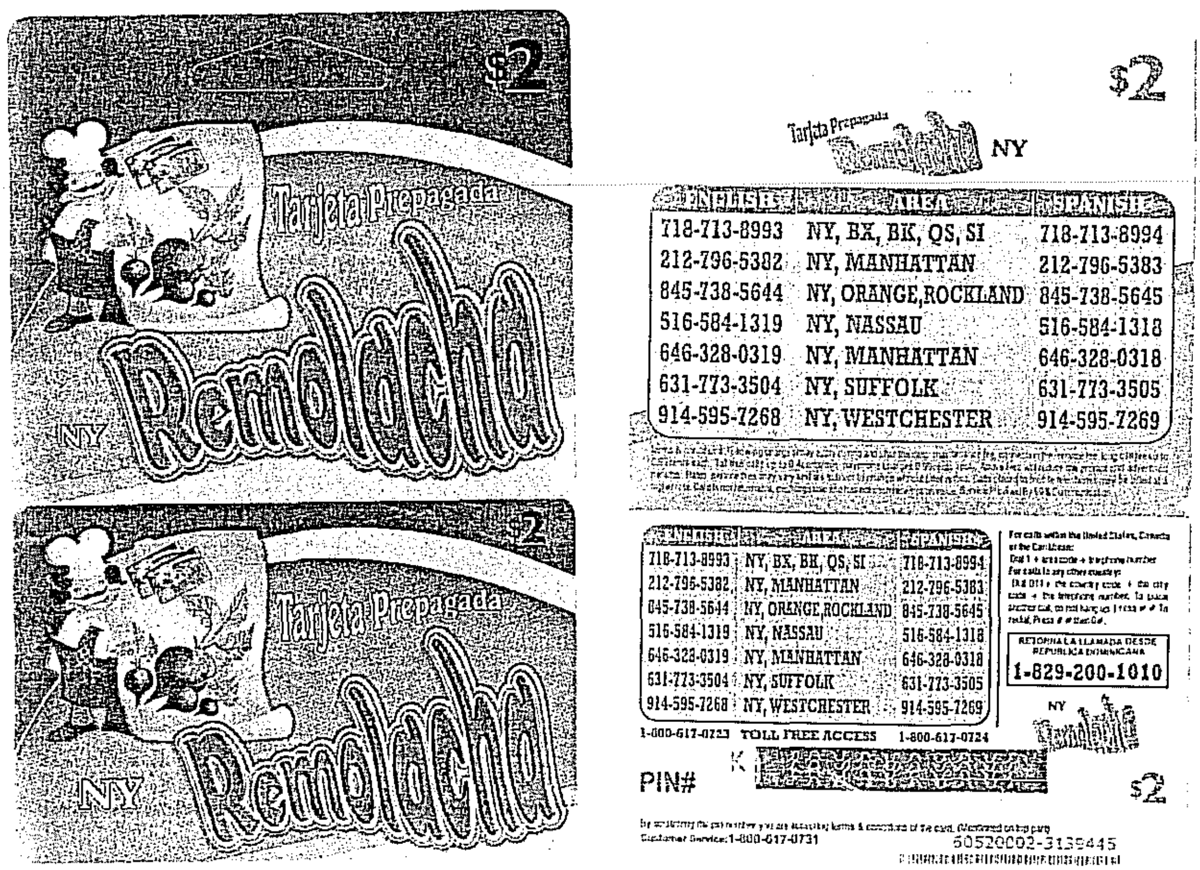
> By using this card you agree to this: Calls are billed in 3 minute increments. A $0.79 FCC mandated surcharge applies from pay phones. Calls to mobile may be billed at a higher rate. A $0.79 maintenance fee will apply. Connection fee may apply. Fed taxes will be deducted. Rates and fees can change with out [sic] prior or later notice. Rate changes, fees and taxes reduce the number of

advertised minutes. Card is not rechargeable, refundable and exchangeable[.] [C]ard and network provide us [sic] make no express or implied warranty about the condition or fitness of the service offered for particular use. Card may be deactivated without notice if fraud or nonpayment is suspected. Card expires 90 days after first use. You are responsible for unauthorized use, loss or theft of card.

DEFENDANTS' CALLING CARDS

26. Defendants' prepaid calling cards generally came in two parts: a top portion, also called a hang tag, and a bottom portion.

27. A copy of the front and back of a Diamond "Remolacha" card is shown below as Graphic A.



28. The front of both the top and bottom portion of the calling card includes the name of the prepaid calling (*e.g.*, "Remolacha") and the value of the card.

29. The back of the top portion repeats the above information, and provides local access numbers that consumers could use to access the system that places their international call. The bottom portion of the calling card often is the size of a credit card and is separable from the top portion by a perforation. This is the actual "calling card." Because the top portion can be separated from the calling card, it is easily discarded.

30. The back of the bottom portion of the calling card includes directions on how to use the card, sometimes in both English and Spanish, a scratch off area that hides the Personal Identification Number ("PIN") necessary to use the calling card, local access numbers, a toll-free access number, and a customer service number.

31. In numerous instances, the back of the top portion of the card also included one or two disclosures that generally used the same language quoted above in Paragraph 25. These disclosures were approximately four lines and were written in approximately five-point font that was so small that the disclosures were nearly illegible. In most instances, the disclosures appeared only on the top discardable portion of the card, but in some instances they also appeared on the bottom portion.

USING THE CALLING CARDS

32. To make a phone call using one of the prepaid calling cards, a consumer first dialed a toll-free number or one of the local access numbers specified on the calling card, entered the unique PIN for that card, and when prompted, entered the phone number of the party the consumer was trying to reach. After the consumer entered the PIN and destination phone number, an automated voice (know in the industry as a "voice prompt") typically announced

how much calling time was left on the card.

33. In numerous instances, the calling minutes actually delivered to consumers by prepaid calling cards sold by Defendants were substantially fewer than what Defendants represented in marketing, advertising, and promoting their cards.

34. For example, Defendants' poster for the \$2.00 "Ooops" card advertised 50 minutes to Guatemala. However, in testing the "Ooops" card, the FTC found that the voice prompt said, "your current balance will allow you to talk for 37 minutes." The FTC test further found that the card's minutes were exhausted after delivering only 20 minutes in a single call.

35. As another example, Defendants' poster for the \$2.00 "Ñ" card advertised 400 minutes to Mexico City, Mexico. The FTC's initial call using the card elicited a voice prompt which said there were 391 minutes of talk time available. However, the FTC found that when making multiple calls using the card, in which each call lasted approximately 20 minutes, the card delivered only five calls for a total of 106 minutes, or just 27% of the poster's promised 400 minutes.

VIOLATIONS OF THE FTC ACT

36. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits unfair or deceptive acts or practices affecting commerce. Misrepresentations or deceptive omissions of material fact constitute deceptive acts or practices pursuant to Section 5(a) of the FTC Act. As set forth below, Defendants, individually or in concert with others, have violated Section 5 of the FTC Act in connection with the advertising, offering for sale, or selling of goods or services.

COUNT I

(Deception–Misrepresentation Regarding Number of Calling Minutes)

37. In numerous instances, in the course of offering for sale and selling prepaid calling

cards, Defendants represented, expressly or by implication, that consumers who purchased prepaid calling cards sold by Defendants would receive a specified number of minutes of calling time to specific countries.

38. In truth and in fact, in numerous instances, consumers who purchased prepaid calling cards sold by Defendants did not receive the specified number of calling minutes to specific countries.

39. Therefore, Defendants' representation set forth in paragraph 37 was and 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).

COUNT II

(Deception–Failure to Disclose Fees)

40. In numerous instances, in the course of offering for sale and selling prepaid calling cards, Defendants represented, expressly or by implication, that consumers who purchased prepaid calling cards sold by Defendants would receive a specified number of calling minutes to specific countries.

41. In numerous instances, Defendants failed to disclose, or to disclose adequately, the existence or amounts of fees that reduced the value of the prepaid calling cards, which in turn reduced the number of calling minutes to specific countries.

42. This additional information, described in Paragraph 41, would be material to consumers in deciding to purchase prepaid calling cards sold by Defendants.

43. Defendants' failure to disclose or to disclose adequately the material information described in Paragraph 41, above, in light of the representation described in Paragraph 40, above, constitutes a deceptive act or practice in violation of Section 5 of the FTC Act, 15 U.S.C.

§ 45(a).

CONSUMER INJURY

44. Defendants' violations of Section 5 of the FTC Act, 15 U.S.C. § 45(a), as set forth above, have injured and will continue to injure numerous consumers across the United States. As a result of Defendants' deceptive acts or practices, consumers have suffered substantial monetary loss. 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 and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

45. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and other relief to prevent and remedy Defendants' violations of the FTC Act, and in the exercise of its equitable jurisdiction, to award redress to remedy the injury to consumers, to order the disgorgement of monies resulting from Defendants' unlawful acts or practices, and to order other ancillary equitable relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the Federal Trade Commission, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. §53 (b), and the Court's own equitable powers, requests that the Court:

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

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

3. Award the FTC the costs of bringing this action, as well as any other equitable relief that the Court may determine to be just and proper.

Dated: Washington, D.C.
July 28, 2009

Respectfully submitted,

WILLARD K. TOM
GENERAL COUNSEL

By: ______________________
TRACEY L. THOMAS
STEPHEN L. COHEN
JANIS CLAIRE KESTENBAUM
FEDERAL TRADE COMMISSION
600 Pennsylvania Avenue, NW H-286
Washington, DC 20580

Attorneys for Plaintiff Federal Trade Commission