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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

THOMAS G. BRUTON
CLERK, U.S. DISTRICT COURT

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

APOGEE ONE ENTERPRISES LLC, a
Pennsylvania limited liability company, also
d/b/a/ Apogee Enterprises LLC, Platinum
Trust Card, and Express Platinum Card,

MARQUEE MARKETING LLC, a Nevada
limited liability company, also d/b/a Express
Platinum Card,

BLAKE RUBIN, individually and also d/b/a/
CR Ventures, LLC, Platinum Trust Card, Express
Platinum Card, and Maxim Management
Group, LLC,

CHASE RUBIN, individually and also d/b/a
CR Ventures, LLC, Platinum Trust Card, Express
Platinum Card, Maxim Management Group,
LLC, and Oakmont Management Services,
LLC,

JUSTIN DIACZUK, individually and as an
officer or owner of Apogee One Enterprises LLC,

JULES SHORE, individually and as an officer or
owner of Marquee Marketing LLC,

Defendants.

12cv588

Judge Matthew F. Kennelly
Magistrate Morton Denlow

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, the refund of monies paid, disgorgement of ill-gotten monies, and other equitable relief for Defendant’s 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 Trade Regulation Rule entitled “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. 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 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.

5. 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 rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies. 15 U.S.C. §§ 53(b), 56(a)(2)(A)-(B), 57b, 6102(c), and 6105(b).

DEFENDANTS

6. Defendant Apogee One Enterprises LLC (“Apogee”), also doing business as Apogee Enterprises LLC, Platinum Trust Card, and Express Platinum Card, is a Pennsylvania limited liability company with its principal place of business at 2200 Michener Street, Suite 12, Philadelphia, Pennsylvania 19115. Apogee transacts or has transacted business in this district and throughout the United States.

7. Defendant Marquee Marketing LLC (“Marquee”), also doing business as Express Platinum Card, is a Nevada limited liability company with its principal place of business at 871 Coronado Center Drive, Suite 200, Henderson, Nevada 89052. Marquee transacts or has transacted business in this district and throughout the United States.

8. Defendant Blake Rubin does business as CR Ventures, LLC, Platinum Trust Card, Express Platinum Card, and Maxim Management Group, LLC. 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 set forth in this Complaint. Defendant Blake Rubin, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

9. Defendant Chase Rubin does business as CR Ventures, LLC, Platinum Trust Card, Express Platinum Card, Maxim Management Group, LLC, and Oakmont Management Services, LLC. 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 set forth in this Complaint. Defendant Chase Rubin, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

10. Defendant Justin Diaczuk is an officer and owner of Defendant Apogee. 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 set forth in this Complaint. Defendant Diaczuk, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

11. Defendant Jules Shore is an officer and owner of Defendant Marquee. At 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 set forth in this Complaint. Defendant Shore, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

COMMERCE

12. At all times material 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 ACTIVITIES

13. Since at least 2009, Defendants have marketed and sold the Platinum Trust Card or the Express Platinum Card (collectively, "Cards") to consumers across the United States.

14. In telemarketing the Cards, Defendants aggressively target consumers with either bad or little credit, including consumers who recently applied for a payday loan.

15. Defendants' telemarketers contact consumers by telephone and inform them that they qualify for one of Defendants' Cards. Defendants' telemarketers tell consumers that the Cards are general-purpose credit cards with a 0% interest rate and a credit limit of \$5000 to \$9500, and that in order to receive and use the Cards, consumers must only pay a one-time advance fee ranging from \$69 to \$99 and then a monthly fee of \$19.

16. To further induce consumers to purchase the Cards, Defendants' telemarketers make a number of additional representations, including that:

- a. The Cards are Visa, MasterCard, or American Express credit cards;
- b. The Cards can be used at any business that accepts Visa, MasterCard, or American Express credit cards;
- c. The Cards can be used to purchase gas and groceries, pay for car repairs, or for any other purpose that a general-purpose credit card, such as a MasterCard or Visa, may be used; and
- d. Using the Cards will help rebuild or repair consumers' credit rating because Defendants report customer payment activity to the major credit bureaus.

17. If consumers ask whether the Cards are “shopping” or “catalog” cards that can be used only to purchase goods from a discrete store or stores, Defendants’ telemarketers unequivocally deny that the Cards have any such limitations and reiterate that the cards can be used at any business that accepts Visa, MasterCard, or American Express credit cards.

18. After explaining the alleged benefits of the Cards, Defendants ask consumers either to provide or to confirm the bank account or other billing information that will be used to pay Defendants’ fees. In many instances, Defendants already have consumers’ bank account information prior to initiating the call, and ask the consumer merely to confirm this information.

19. After the telemarketing call but before providing consumers with the Cards, Defendants obtain payment of their advance fee from consumers’ credit card, debit card, or bank account.

20. In numerous instances, Defendants withdraw the advance fee and monthly fee from the bank accounts of consumers who specifically declined to purchase Defendants’ Cards during the telemarketing call. In other instances, Defendants withdraw the advance fee and monthly fees from the bank accounts of consumers who never received a telemarketing call or other solicitation from Defendants.

21. Defendants do not provide consumers with the promised general-purpose credit card. At most, Defendants provide consumers with the means to access Defendants’ online shopping website. Consumers do not discover this fact until after they have agreed to purchase the Cards and Defendants have collected their advance fee.

22. After paying the advance fee, consumers typically receive a letter or email with instructions for accessing Defendants’ online shopping website. The letter, which includes a thin

plastic card with the size and appearance of a credit card, states: "Now reporting to Innovis Credit Bureau." The letter also states: "Now you have the money you need... To buy the things you want... At the lowest price guaranteed!!!" In other cases, consumers who have paid the advance fee receive nothing at all from Defendants.

23. Contrary to the representations made during the telemarketing calls, Defendants' Cards are not Visa, MasterCard, or American Express credit cards and are not affiliated in any way with these companies or any other payment network. The Cards cannot be used to make purchases at businesses that accept Visa, MasterCard, or American Express, as consumers are promised.

24. Instead, the Cards can only be used to purchase items from Defendants' online shopping website. The vast majority of items for sale on Defendants' online shopping website are sold in bulk quantities at grossly inflated prices. Consumers cannot use the Cards to finance the entire purchase of items from Defendants' shopping website, but must instead use another form of payment to cover up to 51% of the purchase price.

25. Defendants do not report any customer payment history to the major credit bureaus, and consumers cannot rebuild their credit by using the Cards.

26. Consumers who attempt to contact Defendants to cancel their accounts and obtain a refund frequently have difficulty reaching a live representative. Other consumers who are able to reach Defendants over the telephone or via email are told that they may cancel the account, but that the advance fee and previously assessed monthly fees are non-refundable. Some consumers are able to obtain refunds from Defendants, but only after complaining to the Better Business Bureau or a governmental agency, or disputing the transaction with their banks.

VIOLATIONS OF THE FTC ACT

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

28. Misrepresentations or deceptive omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act. Acts or practices are unfair under Section 5 of the FTC Act if they cause substantial injury to consumers that consumers cannot reasonably avoid themselves and that is not outweighed by countervailing benefits to consumers or competition. 15 U.S.C. § 45(n).

COUNT ONE

Misrepresentation of Material Facts

29. In numerous instances in connection with the advertising, marketing, promotion, offering for sale, or sale of the Platinum Trust Card, Express Platinum Card, or similar cards, Defendants have represented, directly or indirectly, expressly or by implication, that:

- a. after paying a fee, consumers will receive a general-purpose credit card;
and
- b. Defendants will report the credit history of their customers to the major credit bureaus.

30. In truth and in fact, in numerous instances in which Defendants have made the representations set forth in Paragraph 29 of this Complaint:

- a. after paying a fee, consumers do not receive a general-purpose credit card;
and

b. Defendants do not report the credit history of their consumers to any of the major credit bureaus.

31. Therefore, Defendants' representations as set forth in Paragraph 29 of this Complaint are false and misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT TWO

Unauthorized Billing

32. In numerous instances, Defendants have caused consumers' bank accounts or credit cards to be charged without consumers' knowledge or authorization.

33. Defendants' actions cause or are likely to cause substantial injury to consumers that consumers cannot reasonably avoid themselves and that is not outweighed by countervailing benefits to consumers or competition.

34. Therefore, Defendants' practices as described in Paragraph 32 above constitute unfair acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. §§ 45(a) and 45(n).

VIOLATIONS OF THE TELEMARKETING SALES RULE

35. 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, resulting in the FTC's promulgation of the TSR, 16 C.F.R. Part 310.

36. Defendants are "seller[s]" or "telemarketer[s]" engaged in "telemarketing," as those terms are defined by the TSR, 16 C.F.R. § 310.2(aa), (cc), and (dd).

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

38. 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 consumers 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).

39. The TSR provides that it is an abusive telemarketing act or practice for a seller or telemarketer to cause “billing information to be submitted for payment, directly or indirectly, without the express informed consent” of the consumer. 16 C.F.R. § 310.4(a)(7).

40. 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 THREE

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

41. In numerous instances, in the course of telemarketing goods and services, Defendants have misrepresented, directly or by implication, that:

- a. after paying a fee, consumers will receive a general-purpose credit card;
and
- b. Defendants will report the credit history of their customers to the major credit bureaus.

42. Defendants' acts or practices, as described in Paragraph 41 above, are deceptive telemarketing acts or practices that violate the TSR, 16 C.F.R. § 310.3(a)(2)(iii).

COUNT FOUR

Telemarketing Advance-Fee Credit Cards

43. In numerous instances, in the course of telemarketing goods and services, Defendants have requested or received payment of a fee or consideration in advance of consumers obtaining an extension of credit when Defendants have guaranteed or represented a high likelihood of success in obtaining or arranging an extension of credit for such consumers.

44. Defendants' acts or practices, as described in Paragraph 43 above, are abusive telemarketing acts or practices that violate the TSR, 16 C.F.R. § 310.4(a)(4).

COUNT FIVE

Lack of Express Informed Consent to be Billed

45. In numerous instances, in the course of telemarketing goods and services, Defendants have caused billing information to be submitted for payment without the express informed consent of the consumer.

46. Defendants' acts or practices, as described in Paragraph 45 above, are abusive telemarketing acts or practices that violate the TSR, 16 C.F.R. § 310.4(a)(7).

CONSUMER INJURY

47. Consumers have suffered and will continue to suffer substantial 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 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

48. 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.

49. 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 the rescission or reformation of contracts, and the refund of money.

PRAYER FOR RELIEF

Wherefore, Plaintiff FTC, 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 injunctions, an order freezing assets, appointment of a receiver, and immediate access to Defendants' business premises;

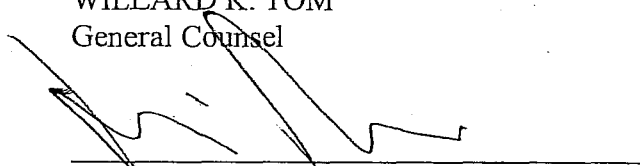
B. Enter a permanent injunction to prevent future violations of the FTC Act and the TSR by Defendants;

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,

WILLARD K. TOM
General Counsel



DATED: January 26, 2012

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