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FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

**PREPARED STATEMENT  
OF  
FEDERAL TRADE COMMISSION**

**PRESENTED BY  
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**TO THE  
ERIE COUNTY CONSUMER PROTECTION COMMITTEE  
ERIE COUNTY, NEW YORK  
CHEEKTOWAGA SENIOR CITIZENS CENTER  
CHEEKTOWAGA, NEW YORK**

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Mr. Chairman and Members of the Committee: I am Ronald Waldman, of the New York Regional Office of the Federal Trade Commission. I am pleased to appear before you today to discuss telemarketing fraud. The views expressed in this statement represent the views of the Commission. My responses to any questions you may have are my own and do not necessarily reflect the views of the Commission or any individual Commissioner.

Telemarketing fraud is a matter of serious concern to consumers and the Commission. Consumers lose between \$3 and \$40 billion each year to fraudulent telemarketers.(1) Financial institutions lose an estimated \$300 million a year from merchant fraud associated with fraudulent telemarketing.(2) In response to this problem, the Federal Trade Commission continues to devote significant law enforcement and consumer education resources to the problem of fraudulent telemarketing.

Since the 1980's, the Federal Trade Commission has brought all available tools to bear on the war against telemarketing fraud. The Commission has filed over 110 federal court actions against companies that had more than a billion dollars in estimated aggregate sales. In these cases, the Commission typically obtains injunctions against future fraudulent conduct and, when assets can be located, orders providing for redress to defrauded consumers. In addition to these civil law enforcement actions, the Commission works with federal and state criminal law enforcement authorities to prosecute fraudulent telemarketers for violations of criminal law. As a result of these cooperative efforts, federal and state authorities represent a powerful united front against these harmful practices.

The most numerous single category of complaints is that concerning promotional sweepstakes.(3) This is a type of deceptive telemarketing that targets individuals, particularly the elderly, rather than business. Promotional sweepstakes complaints are almost three times more numerous than the next largest category of complaints, which is so-called "advertising specialties.(4) In terms of the aggregate amount paid by complainants, promotional sweepstakes are second only to gemstone scams.

The Commission has recently observed a sudden increase in "recovery room" scams. These so-called recovery rooms contact consumers that have been victims of prior telemarketing scams, most often sweepstakes schemes.

The pitch typically used by recovery room telemarketers makes reference to the consumer's prior victimization, sympathetically warns the consumer not to fall for unscrupulous telemarketing schemes again, and then falsely represents that, for an upfront fee, the scammer will assist the consumer in obtaining a refund of the amount the consumer initially lost.<sup>(5)</sup> In fact, the recovery room is simply defrauding consumers one more time and will not engage in any such "recovery" efforts on their behalf. Currently, these operations appear to be targeting individuals rather than businesses.

Fraudulent telemarketers, who traditionally preyed on consumers nationwide from bases such as Florida and Southern California,<sup>(6)</sup> are beginning to "go global." The globalization of telemarketing fraud mirrors the globalization of the world economy, which has been spurred by technological advances in telecommunications and finance. Scam artists in one country can now talk with ease to victims in another and move the proceeds of their fraud from one country to another. Given these technological advances, the globalization of telemarketing fraud was probably inevitable, but the trend may well pose serious new challenges to the Commission's efforts to combat telemarketing fraud.

In the typical domestic telemarketing fraud case, the Commission investigates and brings a civil action in federal district court, generally without notifying the telemarketer in advance. The Commission's initial goal is to halt the ongoing fraud by obtaining a temporary restraining order and a preliminary injunction halting the challenged conduct to prevent further injury to consumers during litigation over a permanent remedy. The Commission usually also asks the court to freeze the telemarketer's assets without prior notice to preserve them for consumer redress if the Commission ultimately is successful in the litigation.<sup>(7)</sup> In many cases, the Commission also asks the court to appoint a receiver to marshal the telemarketer's assets and protect them from dissipation during the pendency of the action. At the end of the case, the court typically enters a permanent injunction against future fraudulent conduct. In particularly egregious cases, some telemarketers have been permanently banned from the telemarketing business, or have been required to post a hefty bond. Most orders require the telemarketer to pay monetary redress to injured consumers or, where circumstances make payment of redress to injured consumers difficult or impossible, to disgorge its ill-gotten gains. Final orders, whether entered following litigation or by consent of the defendants, are enforced through the court's contempt powers.

In the domestic context, the Commission has had significant success with these legal tools. The Commission has successfully used them not only against fraudulent telemarketers — the actual boilerrooms — but against individuals and entities that do not deal directly with consumers, such as list brokers, credit card "factors," and suppliers of travel certificates, whose behind-the-scenes participation in those schemes is essential to their success. The globalization of telemarketing fraud, however, creates problems that these tools were not designed to address.

Telemarketers may now be physically located in other countries and target American consumers. For example, the Commission and other consumer protection agencies have received complaints from consumers about telemarketers located in Canada who fraudulently sell gemstones and precious metals as investments. These foreign gemstone telemarketers use the same types of pitches and techniques as fraudulent domestic telemarketers of dubious investments. Telephone sales representatives use high pressure sales tactics to convince consumers to invest in gemstones and similar products, promising big profits with few risks. They often promise, in addition, that the products can be liquidated easily through the company's own "re-brokerage" services. Sometimes, the sales agents claim there is a new buyer for the gemstones or metals a consumer has already bought, but the consumer must pay additional money as a fee or commission or must buy additional investments before the first investments can be sold. The result is that consumers generally end up with investments worth only a small fraction of what they paid, just as in countless domestic-based telemarketing scams. Tens of millions of dollars have been lost to these firms. Canadian law enforcement authorities recently announced arrests in several of these cases.<sup>(8)</sup>

Some foreign fraudulent telemarketers appear to hide the fact that they are not based in the United States. Some of these firms use 800 numbers that connect United States consumers to boilerrooms located in Canada. Consumers are not likely to expect that calling an 800 number would connect them to a foreign country. Even consumers who

understand that they are talking with someone in a foreign country may not understand the implications this may have on their rights, or on the ability of the United States government to investigate and redress fraudulent practices.

There are real barriers to investigating foreign telemarketers who victimize consumers in the United States. Gathering information about fraudulent telemarketers abroad can be difficult. Victims of foreign fraudulent telemarketers in the United States may not know much about the telemarketers that defrauded them. Sources of information that the Commission's staff normally turn to in a domestic investigation, such as former employees, local law enforcement agencies, and informers, are less accessible in foreign countries. Even if those sources were inclined to supply information, they are less likely to know of the Commission's existence, and the Commission's staff is unlikely to know who they are. Moreover, the Commission's ability to use compulsory process may be ineffective to compel the production of documents or sworn testimony of persons outside the United States.

Despite the legal and technical obstacles, cooperation with foreign law enforcement authorities sometimes yields success. For example, one United States defendant in a telemarketing fraud case violated an asset freeze by withdrawing \$1.2 million from frozen bank accounts and fleeing overseas.<sup>(9)</sup> The Commission obtained an order that he show cause why he should not be held in criminal contempt for his actions. When he failed to appear, the court issued an arrest warrant. The defendant ultimately settled in Canada. Canadian customs officials learned of the arrest warrant, which had been entered in law enforcement databases, and then learned that he had lied on his application for entry into Canada. Canada deported him to the United States under circumstances that permitted him to be arrested on arrival. He was then successfully prosecuted and jailed for his contempt of the federal court's asset-freeze order.

United States agencies combating international telemarketing fraud also cooperate with foreign authorities on the criminal front. If a foreign-based telemarketer is criminally indicted for wire or mail fraud in the United States, extradition proceedings may be instituted to bring the responsible parties to the United States to face criminal charges. This procedure is not available to the Commission, which has only civil law enforcement authority. Nevertheless, the Commission intends to continue to make every effort to encourage the criminal prosecution and extradition of fraudulent foreign telemarketers by providing all possible assistance to the appropriate criminal agencies.

Notwithstanding the difficult problems caused by the globalization of telemarketing fraud, the Commission has been working actively to alert consumers in the United States to the dangers of dealing with foreign telemarketers. For example, in the last year the Commission issued a "consumer alert" concerning the Canadian gemstone telemarketers, warning consumers to use extreme caution when presented with such investment offerings. The staff of the Commission currently is preparing a consumer alert concerning Canadian telemarketers who sell the metal indium as an investment. Consumer information alerts like these are distributed to at least 10,000 key information sources throughout the United States, including state and local government offices, national consumer and business organizations, Better Business Bureaus, and universities.<sup>(10)</sup>

Congress has recently authorized stronger action against telemarketing fraud. The Telemarketing and Consumer Fraud and Abuse Prevention Act<sup>(11)</sup> directs the Federal Trade Commission to issue regulations about telemarketing by August 14, 1995. The regulations will define "deceptive telemarketing acts or practices," which will include "acts or practices of entities or individuals that assist or facilitate deceptive telemarketing, including credit card laundering." The Act also provides for other rules about unsolicited telemarketing, empowers state attorneys general and private individuals who are harmed to bring suits to enforce the new rules when they are issued, and authorizes stronger penalties in telemarketing enforcement actions brought by the Commission itself.

The Federal Trade Commission is committed to combating the telemarketing fraud that preys on consumers in the United States in all its guises, whether domestic or international. On behalf of the Commission, I thank the Erie County Consumer Protection Committee for the opportunity to present the Commission's views on this troubling problem.

- (1) House Committee on Government Operations, *The Scourge of Telemarketing Fraud: What Can Be Done Against It?* H.R. Rep. No. 421, 102nd Cong., 1st Sess., at 7 (December 18, 1991).
- (2) Patrick Michela, "You Have Already Won ... ": Telemarketing Fraud and the Need for a Federal Legislative Solution, 21 *Pepp. L. Rev.* 553, 577 (1994).
- (3) The Commission has brought a number of cases against allegedly deceptive telemarketing sweepstakes promotions. See, e.g., *FTC v. Denny Mason*, CV-S-93-135-PMP (D. Nev. filed Feb. 22, 1993); *FTC v. Sierra Pacific*, CV-S-93-134-PMP (D. Nev. Filed Feb. 22, 1993); *FTC v. Pioneer Enterprises*, Civ. No. CV-S-92-615-LDG-RJJ (D. Nev. filed July 20, 1992).
- (4)" An example is a pencil inscribed with a logo or motto.
- (5) A story by reporter Hattie Kaufman broadcast on "CBS This Morning" on September 15, 1994, provided excellent insight into the workings of the recovery room scam. This report highlighted a sting operation, conducted by the Idaho Attorney General's Office, targeting Las Vegas recovery rooms. The broadcast included the audio portion of the recovery pitch delivered to a state investigator posing as a prior victim.
- (6) *The Scourge of Telemarketing Fraud: What Can be Done Against It?*, *supra* n. 1 at 10.
- (7) Courts have the power, under equitable principles of law, to freeze the assets of defendants who may be liable to pay consumer redress under Section 13(b) of the Federal Trade Commission Act, 15 U.S.C. § 53(b). E.g., *FTC v. H.N. Singer, Inc.*, 668 F.2d 1107 (9th Cir. 1982).
- (8) 50 Arrested in Cut-Rate Jewelry Scam, *Toronto Star*, June 3, 1993, at A3.
- (9) *FTC v. American National Cellular, Inc., et. al.*, No. 85-7375 WJR (C.D. Cal., filed November 12, 1985).
- (10) Approximately 28,000 copies of the Canadian gemstones alert have been distributed.
- (11) Pub. L. No. 103-297, 108 Stat. 1545 (1994).