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MIDDLE DISTRICT OF FLORIDA
TAMPA, FLORIDA

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

FEDERAL TRADE COMMISSION, **Plaintiff,** **v.** **FINANCIAL ADVISORS & ASSOCIATES INC., a corporation, also d/b/a Freedom Financial and MyUnsecuredCreditCard.com; and** **JAMES SWEET, individually and as President of Financial Advisors & Associates Inc.,** **Defendants.**	**Case No.** 8:08-cv-00907-T-26 TBM **PLAINTIFF'S 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 jurisdiotion 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 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 Financial Advisors & Associates Inc., is a Florida corporation with its principal place of business at 11590 Seminole Blvd., Suite A-12, Largo, FL 33778. Defendant Financial Advisors & Associates Inc. does business as Freedom Financial and MyUnsecuredCreditCard.com. (Defendant Financial Advisors & Associates Inc. is hereinafter referred to as "Freedom Financial.") Freedom Financial transacts or has transacted business in this District.

6. Defendant James Sweet is the president of Freedom Financial. 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 Freedom Financial, including the acts and practices set forth in this complaint.

DEFENDANTS' BUSINESS PRACTICES

7. Defendants are sellers of advance-fee credit cards. Defendants are also telemarketers that initiate outbound telephone calls to consumers in the United States to induce the purchase of their advance-fee credit cards

8. 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.

9. 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.

10. Since at least March 2004, Defendants have marketed a limited-purpose, advance-fee credit card in the guise of a general-purpose credit card. Defendants' employees and telemarketers represent to consumers that the Freedom Financial "credit card" can be used to make purchases in department stores, supermarkets, or for any other purpose that a general-purpose credit card, such as a MasterCard or Visa, is used.

11. Defendants target consumers with either bad or little credit, and promise that their Freedom Financial "credit card" contains a credit line of $2,000 to $3,000.

12. Defendants tell consumers that, to obtain the Freedom Financial "credit card," consumers must pay 10% of the credit line in advance by authorizing Defendants to deduct $200 to $300 from the consumers' bank accounts.

13. Defendants also tell consumers that by agreeing to receive the Freedom Financial "credit card," consumers will be able either to repair their bad credit, or establish new credit. Defendants tell consumers that they report consumers' credit history to the major credit bureaus, and, in particular, to Equifax.

14. After consumers provide Defendants with their bank account information, Defendants tell consumers that they will receive a welcome kit and other information in

the mail shortly, including an authorization form that must be signed and returned, along with a voided check and proof of identification, such as a copy of a driver's license.

15. When consumers receive Defendants' welcome kit, they discover that instead of the promised general-purpose credit card, the Freedom Financial card can only be used to make purchases from Defendants' catalog and website. Additionally, consumers learn that they must first pay 35% of the cost towards any such purchase by authorizing Defendants to deduct the appropriate amount from their bank accounts.

16. In numerous instances, consumers contact Defendants and request a refund of the funds Defendants took from their bank accounts. In numerous instances, Defendants state that before issuing a refund the consumer has to pay a $35 "early termination" fee.

17. In some instances, Defendants deduct a $30 "quarterly maintenance" fee from consumers' bank accounts without the consumer's knowledge.

18. Defendants do not disclose to consumers, in a clear and conspicuous manner at the time of the initial telemarketing presentation, the $30 "quarterly maintenance" fee or the requirement that consumers must first pay 35% in cash towards any purchase made with the Freedom Financial credit card.

19. On or after October 17, 2003, Defendants have called, or have caused telemarketers to call, consumers' telephone numbers that are on the National Do Not Call Registry.

20. On or after October 17, 2003, Defendants have called, or have caused telemarketers to call, telephone numbers in various area codes without first paying the annual fee for access to the telephone numbers within such area codes that are included in the National Do Not Call Registry.

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 have represented, directly or indirectly, expressly or by implication, that after paying a fee, consumers will or are likely to receive a general-purpose credit card, such as a MasterCard or Visa.

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, such as a MasterCard or Visa.

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).

COUNT II

25. In numerous instances, in the course of marketing an advance-fee credit card, Defendants have represented, expressly or by implication, that after payment of an advance fee in an amount of $200 to $300, consumers will receive a general-purpose credit card, such as a MasterCard or Visa.

26. In numerous instances, Defendants have failed to disclose, or to disclose adequately to consumers that Defendants assess a $30 "quarterly maintenance" fee, require consumers to pay a 35% cash down payment towards any purchases, and automatically deduct such fees from consumers' bank accounts.

27. The Defendants' failure to disclose or disclose adequately the material information described in Paragraph 26, above, in light of the representation described in Paragraph 25, above, constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT III

28. In numerous instances, in connection with the marketing of an advance-fee credit card, Defendants have represented, directly or indirectly, expressly or by implication, that they report the credit histories of their customers to the major credit bureaus, and in particular to Equifax.

29. In truth and in fact, in numerous instances in which Defendants have made the representation above, Defendants did not report the credit history of their customers to any of the major credit bureaus.

30. Therefore, Defendants' representation as set forth in Paragraph 28 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

31. 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.

32. Defendants are "seller[s]" or "telemarketer[s]" engaged in "telemarketing," as defined by the TSR, 16 C.F.R. § 310.2(z), (bb), and (cc).

33. The TSR prohibits sellers and telemarketers from failing to disclose truthfully in a clear and conspicuous manner, before a customer pays for goods or services, among other things, the total costs to purchase, receive, or use, and the quantity of any goods or services, that are the subject of the sales offer. 16 C.F.R. § 310.3(a)(1)(i).

34. 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).

35. The TSR prohibits any seller or telemarketer from making a false or misleading statement to induce any person to pay for goods or services or to induce a charitable contribution. 16 C.F.R. § 310.3(a)(4).

36. 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).

37. The TSR also established a "do-not-call" registry (the "National Do Not Call Registry" or "Registry"), maintained by the FTC, of consumers who do not wish to receive certain types of telemarketing calls. Consumers can register their telephone numbers on the Registry without charge either through a toll-free telephone call or over the Internet at www.donotcall.gov.

38. Consumers who receive telemarketing calls to their registered numbers can complain of Registry violations the same way they registered, through a toll-free telephone call or over the Internet at www.donotcall.gov, or by otherwise contacting law enforcement authorities.

39. On or after September 2, 2003, the FTC allowed sellers, telemarketers, and other permitted organizations to access the Registry over the Internet at www.telemarketing.donotcall.gov, pay the required fees, and download the registered numbers by area code.

40. Since October 17, 2003, sellers and telemarketers subject to the FTC's jurisdiction have been prohibited from calling numbers on the Registry in violation of the TSR. 16 C.F.R. § 310.4(b)(1)(iii)(B).

41. Since October 17, 2003, sellers and telemarketers have been generally prohibited from calling any telephone number within a given area code unless the seller first has paid the annual fee for access to the telephone numbers within that area code that are included in the National Do Not Call Registry. 16 C.F.R. § 310.8(a) and (b).

42. 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 IV (Failure to Disclose)

43. In numerous instances, in the course of telemarketing an advance-fee credit card, Defendants have failed to disclose truthfully, in a clear and conspicuous manner, before a consumer paid for the goods or services offered, the total cost to purchase, receive, or use the goods or services that are the subject of the sales offer,

including a $30 "quarterly maintenance" fee and a requirement that consumers pay in cash, in advance, 35% of the cost of any purchases made with the Freedom Financial credit card.

44. Defendants' practice as alleged in Paragraph 43 is a deceptive telemarketing practice that violates Section 310.3(a)(1)(i), 16 C.F.R. § 310.3(a)(1)(i).

COUNT V (Misrepresentation)

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

46. Defendants' practice as alleged in Paragraph 45 is a deceptive telemarketing act or practice that violates Section 310.3(a)(2)(iii) of the TSR, 16 C.F.R. § 310.3(a)(2)(iii).

COUNT VI (Misrepresentation)

47. In numerous instances, in the course of telemarketing an advance-fee credit card, Defendants have made false or misleading statements to induce a person to

pay for goods or services, including statements that Defendants report consumers' credit histories to the major credit bureaus.

48. Defendants' practice as alleged in Paragraph 47 is a deceptive telemarketing act or practice that violates Section 310.3(a)(4) of the TSR, 16 C.F.R. § 310.3(a)(4).

COUNT VII (Advance Fee)

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

50. Defendants' practice as alleged in Paragraph 49 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).

COUNT VIII (Violating the National Do Not Call Registry)

51. In numerous instances, since October 17, 2003, in connection with the telemarketing of an advance-fee credit card, Defendants have engaged in or caused others to engage in initiating an outbound telephone call to a person's telephone number on the National Do Not Call Registry.

52. Defendants' practice as alleged in Paragraph 51 is an abusive telemarketing act or practice that violates Section 310.4(b)(1)(iii)(B) of the TSR, 16 C.F.R. § 310.4(b)(1)(iii)(B).

COUNT IX (Failing to Pay National Registry Fees)

53. In numerous instances, since October 17, 2003, in connection with the telemarketing of an advance-fee credit card, Defendants have initiated, or caused others to initiate, an outbound telephone call to a telephone number within a given area code without Defendants, either directly or through another person, first paying the required annual fee for access to the telephone numbers within that area code that are included in the National Do Not Call Registry.

54. Defendants' practice as alleged in Paragraph 53 is an abusive telemarketing act or practice that violates Section 310.8 of the TSR, 16 C.F.R. § 310.8.

CONSUMER INJURY

55. 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

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

57. 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 or other persons resulting from Defendants' violations of the TSR, including the 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 injunctions, an order freezing assets, and immediate access.

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

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