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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

FEDERAL TRADE COMMISSION,

v.
9107-4021 QUÉBEC, INC.,
a corporation, also d/b/a Med Provisions,
and Pronto Meds,

and
SAMEER MALHOTRA,
individually and as an officer of the corporation,

and
POOJA MALHOTRA,
individually and as an officer of the corporation,

Defendants.

Plaintiff,

1:08CV1051
Civ. No.

JUDGE NUGENT

MAG. JUDGE PERELMAN

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

Plaintiff, 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 gains, and other equitable relief against Defendants for engaging in unfair and deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and in violation of the Commission’s Telemarketing Sales Rule (“TSR”), 16 C.F.R. Part 310.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over this matter 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 in the Northern District of Ohio is proper under 15 U.S.C. § 53(b) and 28 U.S.C. § 1391(d).

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 9107-4021 Québec, Inc. (“Med Provisions”), is a Canadian corporation organized in Québec and doing business as Med Provisions, Pronto Meds and other names. Its principal place of business is at 1118 Rue Sainte-Catherine Ouest, Montréal Québec, Canada H3B1H5. Med Provisions transacts or has transacted business in the Northern District of Ohio.

6. Defendant Sameer Malhotra (“Sameer”) is a citizen of Canada and an officer of Defendant Med Provisions. He lives in Montréal, Québec, Canada. In connection with the matters alleged herein, directly or through Med Provisions, Defendant Sameer has transacted business in the Northern District of Ohio. 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 Defendant Med Provisions, including the acts and practices set forth in this Complaint.

7. Defendant Pooja Malhotra (“Pooja”) is a Canadian citizen and an officer of Defendant Med Provisions. She lives in Montréal, Québec, Canada. In connection with the matters alleged herein, directly or through Med Provisions, Defendant Pooja has transacted business in the Northern District of Ohio. At all times material to this Complaint, acting alone or in concert with others, she has formulated, directed, controlled, or participated in the acts and practices of Defendant Med Provisions, including the acts and practices set forth in this Complaint.

DEFENDANTS’ BUSINESS ACTIVITIES

8. Med Provisions is a seller of purported discount prescription drug packages to consumers. Med Provisions is also a telemarketer that initiates outbound telephone calls to consumers in the United States to induce the purchase of its goods or services.

9. 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.

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

11. Since some time in 2006 and continuing thereafter Defendants, either directly or through intermediaries, have telephoned elderly people throughout the United States and represented to them that Defendants can save them 30 to 50 percent on the cost of their prescription drugs. Defendants claim to operate an online pharmacy that distributes over 2000 prescription drugs to consumers in the United States. Defendants purport to offer a 30-day money-back guarantee for their “membership package,” for which they charge \$389. They do not say how long the “membership package” will remain valid or describe any limitations on it.

12. Sometimes Defendants tell elderly consumers that they will lose their Medicare benefits if they do not sign up for the Med Provisions membership package. Sometimes, the Med Provisions representative already possesses important personal information about the consumer before the call, such as his or her bank routing number. Sometimes Defendants tell consumers that their accounts will not be charged if they return the package unopened within thirty days.

13. If consumers provide their bank account information to the Med Provisions representative, Defendants debit their accounts in the amount of \$389 on the same day that they are called or shortly thereafter.

14. Some consumers receive a package from Med Provisions within a few weeks of having their bank account debited, but many never receive anything. Those who do receive the

package discover that it contains a card from an organization called PharmaBay.net that purports to make drugs from Canada available to American consumers. In fact, the card cannot be used in American pharmacies and is essentially worthless.

15. Consumers who attempt to secure refunds from Med Provisions are refused unless they return the package they received. Many consumers are unable to comply with this requirement because they did not receive a package. Even those who do receive a package and return it are frequently unable to receive refunds. Consumers who protest the charges to their banks have had varying degrees of success in receiving refunds.

16. Upon information and belief, Med Provisions submitted debits to the bank accounts of over 9000 consumers in the United States through August 4, 2007, that would have yielded over \$3.5 million if all transactions had been fulfilled.

17. Upon information and belief, Defendants continue to sell a similar worthless program using the business name Pronto Meds instead of Med Provisions. The program that replaced PharmaBay.net is called Domainmeds.com. While the Domainmeds.com program is slightly different from the PharmaBay.net program it, too, does not provide the promised savings.

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

19. 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

20. 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 ONE

21. In numerous instances in the course of marketing a purported discount prescription drug package, Defendants have represented, directly or indirectly, expressly or by implication, that their package would save consumers 30 to 50 percent compared to the retail price of prescription drugs.

22. In truth and in fact, Defendants' package does not save consumers any money on prescription drugs, let alone 30 to 50 percent.

23. Therefore, Defendants' representation as set forth in Paragraph 21 above 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 TWO

24. In numerous instances in the course of marketing a purported discount prescription drug package, Defendants have represented, directly or indirectly, expressly or by implication, that consumers would lose their Medicare benefits if they did not purchase Defendants' package.

25. In truth and in fact, consumers would not lose their Medicare benefits if they did not purchase Defendants' package. Defendants' medical discount package is unrelated to consumers' eligibility to participate in Medicare or any other government program.

26. Therefore, Defendants' representation as set forth in Paragraph 24 above 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 THREE

27. In numerous instances in the course of marketing a purported discount prescription drug package, Defendants have represented, directly or indirectly, expressly or by implication, that

they provide a 30-day money back guarantee or that they will not charge the consumer's bank account if the consumer cancels his or her participation in the package within 30 days.

28. In truth and in fact, in numerous instances in which Defendants have made the above representation, consumers who have tried to cancel their participation within 30 days have not received refunds or consumers' bank accounts have been charged despite their attempts to cancel their participation within 30 days.

29. Therefore, Defendants' representations as set forth in Paragraph 27 above were and 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).

TELEMARKETING SALES RULE VIOLATIONS

30. 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.

31. 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).

32. 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).

33. The TSR prohibits sellers and telemarketers from misrepresenting, directly or by implication, in the sale of goods or services, any material aspect of the nature or terms of the seller's refund, cancellation, exchange or repurchase policies. 16 C.F.R. § 310.3(a)(2)(iv).

34. 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).

35. The TSR also established a "do-not-call" registry, maintained by the FTC (the "National Do Not Call Registry" or "Registry"), 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.

36. 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.

37. 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 fee, and download the registered numbers.

38. 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).

39. 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).

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 FOUR

41. In numerous instances, in the course of telemarketing a purported discount prescription drug package, Defendants have misrepresented, directly or by implication, material aspects of the performance, efficacy, nature, or central characteristics of the goods or services they sell, including that consumers will obtain substantial discounts on prescription drugs by purchasing Defendants' package.

42. Defendants' practice as alleged in Paragraph 41 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 FIVE

43. In numerous instances, in the course of telemarketing a purported discount prescription drug package, Defendants have made false or misleading statements to induce consumers to pay for goods or services, including, but not limited to, misrepresentations that consumers would lose their Medicare benefits if they did not purchase Defendants' package.

44. Defendants' practice as alleged in Paragraph 43 is a deceptive telemarketing practice that violates Section 310.3(a)(4) of the TSR, 16 C.F.R. § 310.3(a)(4).

COUNT SIX

45. In numerous instances in the course of telemarketing a purported discount prescription drug package, Defendants have misrepresented, directly or by implication, a material aspect of the nature or terms of their refund or cancellation policies, including that:

- (a) Defendants provide a 30-day money back guarantee; and
- (b) Defendants will not charge the consumer's bank account if the consumer cancels his or her participation within 30 days.

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

COUNT SEVEN

47. In numerous instances, in connection with telemarketing, Defendants 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 in violation of the TSR, 16 C.F.R. § 310.4(b)(1)(iii)(B).

COUNT EIGHT

48. In numerous instances, in connection with telemarketing, 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, in violation of the TSR, 16 C.F.R. § 310.8.

CONSUMER INJURY

49. Consumers throughout the United States, including consumers in the Northern District of Ohio, 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 acts and 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

50. 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.

51. 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 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:

1. 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, and an order freezing assets;
2. Enter a permanent injunction to prevent future violations of the FTC Act and the TSR by Defendants;
3. 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

4. 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.

DATE: April 24, 2008

Respectfully submitted,

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