



May 12, 2003

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th St., S.W., Room TWB-204
Washington, D.C. 20554

Re: Ex Parte Submission in CG Docket No. 02-278

Dear Ms. Dortch:

We submit for inclusion in the record in this proceeding a notice from the Federal Trade Commission ("FTC") announcing an enforcement action against the operator of two web sites that promise consumers that they can sign up for the FTC's do-not-call ("DNC") registry through its web sites together with a copy of the complaint the FTC has filed in this matter. On behalf of our client, The Direct Marketing Association ("The DMA"), we ask that you make this notice and the complaint part of the record in the above-referenced proceeding because this matter bears importantly on matters this Commission is considering in this docket.

First, the DMA believes that the existence of this complaint demonstrates the potential vulnerability of online registration for a DNC list. This is a matter that The DMA addressed its comments in this docket and its concerns are substantiated by this recent development. The DMA urges the FCC to consider carefully how – or even whether – online registration is possible at this time.

Second, The DMA believes that this complaint demonstrates why creating a nation-wide list from scratch is a flawed approach to the problem. As The DMA has previously explained, this Commission is empowered by the TCPA to require all of the states that currently have lists to combine those lists with and into a national list that the FCC creates. Thus, there would not be a need to register a tremendous number of people for an FCC list because they would automatically be placed on the FCC's list by virtue of the fact that they are on a state list. The FCC does not have the ability to automatically "harmonize" the state lists into its list and therefore must seek this large number of individual registrations.

Finally, The DMA believes that the complaint demonstrates that the FTC is mistaken in its belief that its proposed online system will prevent third-party registration. The FTC's Statement of Basis and Purpose for the Telemarketing Sales Rule's amendments describes two methods that the FTC will use to verify online registration and prevent third-party registration. 68 Fed. Reg. 4580, 4639 (Jan. 29, 2003). The FTC first proposed that users would be asked for information in addition to their telephone numbers, such as a street address and/or zip code. The FTC believes that this additional information will verify that the person submitting it is the owner of the telephone number being placed on the DNC list. Yet, it appears from the complaint that the defendant was obtaining such information from individuals; the defendants would then be able to provide this information to the FTC, thwarting this first method of verification.

The FTC also suggested that users would be asked for an email address for verification purposes. The defendants in the complaint, however, allegedly obtained email addresses from the users. Thus, the defendants would be able to submit individual email addresses to the FTC. Individuals would then receive an email from the FTC asking that they confirm their registration. Thus, the online registration system the FTC is putting into operation not only will enable third party registration – with all of its potential for abuse – but will result in consumers paying for registration in direct contravention of the TCPA.

Respectfully submitted,

/s/

Ian D. Volner

cc: Margaret Egler, Esq.
Jerry Cerasale
James Conway



Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

For Release: May 8, 2003

FTC Cracks Down on "Pre-Registration" Scams for the National "Do Not Call" List

Registration Will be Free and Begin in July 2003

Two Internet sites claiming that they can "pre-register" consumers with the Federal Trade Commission's National telemarketing "Do Not Call" Registry are the focus of a federal district court complaint filed by the FTC. The Commission is seeking a temporary restraining order to stop immediately the deceptive claims made on Free Do Not Call List.org (FDCL.org) and National Do Not Call List.US (NDNCL.US), two Internet Web sites operated from Novato, California.

The FTC's registry will accept consumer registrations beginning this summer. Anyone who want to place their telephone number on the list must register from their own phone or through a federal government Web site. Registration will be free.

"These scam artists are seizing on the public's interest in the 'Do Not Call' Registry," said Howard Beales, director of the FTC's Bureau of Consumer Protection. "But the law doesn't allow third party profiteers to be in the do not call business. In fact, come this summer, it will be up to individual consumers to register their own phone numbers, for free, on the one and only bona fide national 'Do Not Call' Registry."

The Commission's Complaint

The Commission filed the complaint announced today against Ken Chase, doing business as Free Do Not Call List.org and National Do Not Call List.US. According to the Commission's complaint, consumers who respond to Chase's claims and attempt to pre-register for the FTC's "Do Not Call" Registry receive an e-mail stating that their pre-registration has been received and that their information will be transmitted to the FTC as soon as the list becomes available. The Free Do No Call List Web site also allegedly directs consumers who want to stop receiving telemarketing calls to what it describes as "the Active list" at National Do Not Call List.US.

Once there, the complaint alleges that consumers are told that by

Related Documents:

FTC v. Ken Chase d/b/a Free Do Not Call List.org and d/b/a National Do Not Call List.US (Northern District of California, San Francisco Division)

[Complaint](#) for Injunction and Other Equitable Relief [PDF 408KB]

Fraud on the Line:

Avoiding 'Do Not Call' Scams



subscribing to the service they can stop receiving such calls, as well as unsolicited faxes and junk mail. The cost for the service is between \$9.99 and \$17.99 per year. This site allegedly also falsely claims that it can place consumers on the FTC's "Do Not Call" registry.

The complaint charges Chase with deceptively representing to consumers that the FDNCL.org and NDNCL.US Web sites can arrange for consumers' telephone numbers to be placed on the Commission's "Do Not Call" Registry, in violation of Section 5 of the FTC Act.

In addition, the Commission states that the defendants' claims that the Web sites can be used to sign up for the registry are likely to cause consumers to provide their personal identifying information, and in the case of NDNCL.US, to subscribe to its service. Finally, it is possible that consumers who sign up via one of the two Web sites would reasonably think their names would be included in the national registry and that they would not need to sign up on their own, according to the FTC.

In addition to filing the complaint, the FTC has sought a temporary restraining order to halt the defendant's allegedly deceptive misrepresentations of his ability to place consumers' phone numbers on the Commission's registry.

Signing Up for the FTC's "Do Not Call" Registry

Beginning in July 2003, consumers will be able to put their telephone numbers on the national registry, which telemarketers subsequently will be required to access. When registration opens in July, consumers can register for free in two ways: online or by telephone. The FTC will announce the Web site URL for online registration and the toll-free number in July. As of October, it will be illegal for most telemarketers to call a number listed on the registry.

Consumer Education Information

To provide consumers with more information on the "Do Not Call" Registry, the registration process, and new Telemarketing Sales Rule (TSR) Amendments, the Commission has developed a Web site, which is located at www.ftc.gov/bcp/conline/edcams/donotcall/index.html. The site also contains information, available in both English and Spanish, for businesses to help them comply with the new TSR Amendments.

The Commission today also released a consumer education publication entitled "[Fraud on the Line: Avoiding 'Do Not Call' Scams](#)." The document provides consumers tips on avoiding these scams, such as:

- Keep information about your bank accounts and credit cards to yourself - including the numbers, unless you know who you're

dealing with.

- Don't share your personal information if someone calls you claiming to represent a "Do Not Call" registry, an organization to stop fraud, or even the FTC itself. If you get such a call, either hang up immediately or write down the caller's organization and phone number and report it to the FTC at <http://www.ftc.gov/> or 1-877-FTC-HELP, or to your state attorney general.

The Commission vote authorizing the staff to file the complaint was 5-0. It was filed on May 6, 2003, in the U.S. District Court for the Northern District of California.

NOTE: The Commission files a complaint when it has "reason to believe" that the law has or is being violated, and it appears to the Commission that a proceeding is in the public interest. A complaint is not a finding or ruling that the defendants have actually violated the law. The cases will be decided by the courts in which they were filed.

Copies of the complaint mentioned in this release are available from the FTC's Web site at <http://www.ftc.gov/> and also from the FTC's Consumer Response Center, Room 130, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. The FTC works for the consumer to prevent fraudulent, deceptive, and unfair business practices in the marketplace and to provide information to help consumers spot, stop and avoid them. To file a complaint, or to get free information on any of 150 consumer topics, call toll-free, 1-877-FTC-HELP (1-877-382-4357), or use the complaint form at <http://www.ftc.gov/>. The FTC enters Internet, telemarketing, and other fraud-related complaints into Consumer Sentinel, a secure, online database available to hundreds of civil and criminal law enforcement agencies worldwide.

MEDIA CONTACT:

Cathy MacFarlane
Office of Public Affairs
202-326-3657

STAFF CONTACT:

Eileen Harrington
Bureau of Consumer Protection
202-326-3127

(FTC File No. 032-3134; Civ. No. C-03-2139-MEJ)

(<http://www.ftc.gov/opa/2003/05/kenchase.htm>)

1 WILLIAM E. KOVACIC
2 General Counsel
3 DAVID M. NEWMAN (54218)
4 901 Market St., Suite 570
5 San Francisco, CA 94103
6 415-848-5100 (telephone)
7 415-848-5184 (facsimile)

8 ELIZABETH A. HONE
9 BRAD WINTER
600 Pennsylvania Ave. NW
10 Washington, DC 20580
202-326-3207 (telephone)
202-326-2597 (telephone)
202-326-3395 (facsimile)

11 For Plaintiff Federal Trade Commission

12
13 **UNITED STATES DISTRICT COURT**
14 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
15 **SAN FRANCISCO DIVISION**

ORIGINAL
FILED
03 MAY -6 PM 1:04
RICHARD W. HIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
E-filing

MEJ

C 03 - 2139

16 FEDERAL TRADE COMMISSION,)
17)
18 Plaintiff,)
19)
20 v.)
21 KEN CHASE)
22 d/b/a Free Do Not Call List.org)
and d/b/a National Do Not Call List.US,)
23 Defendant.)

24 **COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF**

25 Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), for its Complaint
26 alleges:
27

- 28 1. The FTC brings this action under Sections 5(a) and 13(b) of the FTC Act, 15

1 U.S.C. §§ 45(a) and 53(b), to obtain temporary, preliminary, and permanent injunctive relief,
2 rescission of contracts, restitution, disgorgement, and other equitable relief for the Defendant's
3 violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).
4

5 JURISDICTION

6 2. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C.
7 §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 53(b) and 57b. This action arises under 15 U.S.C.
8 § 45(a)(1).
9

10 VENUE

11 3. Venue in the United States District Court for the Northern District of California is
12 proper under 28 U.S.C. §§ 1391(b), and 15 U.S.C. § 53(b).
13

14 INTRADISTRICT ASSIGNMENT

15 4. A substantial portion of the events that give rise to the claims asserted in this
16 matter occurred in Marin County, California. Therefore, this case should be assigned to the San
17 Francisco or Oakland Division of this Court.
18

19 THE PARTIES

20 5. Plaintiff, the FTC, is an independent agency of the United States Government
21 created by statute. 15 U.S.C. §§ 41 *et seq.* The Commission is charged, *inter alia*, with
22 enforcement of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or
23 deceptive acts or practices in or affecting commerce, as well as with enforcement of the
24 Telemarketing Sales Rule, 16 C.F.R. § 310. The Commission is authorized to initiate federal
25 district court proceedings; by its own attorneys, to enjoin violations of the FTC Act in order to
26 secure such equitable relief as may be appropriate in each case, and to obtain consumer redress.
27 15 U.S.C. §§ 53(b) and 57b.
28

1 FTC's jurisdiction will be potentially subject to civil penalties of up to \$11,000 for each call they
2 make to consumers whose phone numbers are on the FTC Registry. See 15 U.S.C. §
3 45(m)(1)(a), as modified by 28 U.S.C. 2461 & 1.98(d) of the FTC Rules of Practice, 16 CFR
4 1.98(d); and 15 U.S.C. § 6102(c).
5

6 11. In the course of the FTC's rulemaking, more than 44,000 commenters expressed
7 support for the creation of a National Do Not Call Registry.

8 12. Some commenters suggested that third party registration could lead to abusive
9 practices, such as companies deceptively offering to add consumers telephone numbers to the
10 FTC Registry for a fee.
11

12 13. In its Statement of Basis and Purpose, the Commission determined that third party
13 registration should not be permitted. Indeed, the FTC has designed procedures to ensure that
14 telephone numbers are not entered in bulk into the National Do Not Call Registry. See 68 Fed.
15 Reg. 4580 at 4639 (Jan. 29, 2003).
16

17 14. The only exceptions the Commission made to the prohibition on third party
18 registration were to agree to add to the FTC's National Do Not Call Registry lists of subscribers
19 compiled by state governments pursuant to state do-not-call laws, in order to harmonize federal
20 and state do not call laws, and to offer to include in the FTC Registry the established do not call
21 list maintained by the Direct Marketing Association. *Id.* at 4641.
22

23 15. Despite the fact that the FTC has made clear that it will prevent other third parties
24 from placing consumers' phone numbers on the FTC's National Do Not Call Registry, the
25 Defendant Kenneth Chase represents that Free Do Not Call List.org and National Do Not Call
26 List.US will arrange for consumers' phone numbers to be placed on the FTC's Do Not Call
27 Registry.
28

1 16. Since at least March 2003, and continuing thereafter, through the website
2 www.free-do-not-call-list.org, Defendant Kenneth Chase d/b/a Free Do Not Call List.org has
3 represented that consumers can “preregister for the proposed FTC Do Not Call List” by
4 providing d/b/a Free Do Not Call List.org with their personal identifying information.
5

6 17. Consumers who attempt to preregister for the FTC’s Do Not Call Registry
7 through Free Do Not Call List.org’s website receive email from Free Do Not Call List.org which
8 says:

9 Your pre-registration has been received for the FTC’s National Do Not Call list.

10 Your information will be transmitted to the FTC as soon as the list becomes
11 available, proposed for the last quarter of 2003.

12 18. Through Free Do Not Call List.org’s website, consumers can request that Free Do
13 Not Call List.org send email information to other consumers. The email that Free Do Not Call
14 List sends out says:

15 If you are interested in signing up for the Federal Trade Commission’s National Do Not Call
16 List, I’ve found this website where you can pre-register and its FREE!

17 They will automatically get your name included on the National Do Not Call LIST when it is
18 activated so that you can be one of the first on the list.

19 19. The Free Do Not Call List.org website also directs consumers who want to stop
20 receiving telemarketing to what it describes as “the Active list” at www.national-do-not-call-
21 list.us.

22 20. Since at least January 2003, and continuing thereafter, through the website,
23 www.national-do-not-call-list.us, the Defendant Kenneth Chase has represented that by
24 subscribing to National Do Not Call List.US’s service, consumers can stop receiving
25 telemarketing calls, junk faxes and junk email.
26
27
28

1 21. It costs between \$9.99 to \$17.99 for an annual subscription to National Do Not
2 Call List.US's services.

3 22. National Do Not Call List.US claims that one of the services it provides its
4 subscribers is placement on the FTC's National Do Not Call Registry. The National Do Not Call
5 List.US website states:
6

7 The Federal Trade Commission is attempting [a national do not call list run by the government],
8 but there is no way to sign up for it at present. Once the government list is a reality, we will
submit the necessary information on your behalf.

9 23. The Defendant's misrepresentations about the ability of Free Do Not Call List.org
10 and National Do Not Call List.US to arrange for consumers' telephone numbers to be placed on
11 the FTC's National Do Not Call Registry are likely to lead consumers to subscribe to
12 Defendant's services and to fail to avail themselves of one of the actual methods they can use to
13 place their phone numbers on the FTC's National Do Not Call Registry.
14

15 24. The Defendant's misrepresentations are likely to hinder or preclude some of those
16 consumers who most want to be on the National Do Not Call Registry from receiving the
17 benefits of the Registry.
18

19 **VIOLATIONS OF SECTION 5 OF THE FTC ACT**

20 25. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits "unfair or deceptive acts
21 or practices in or affecting commerce."

22 **COUNT I**

23 26. Paragraphs 1 through 24 are incorporated herein by reference.

24 27. In numerous instances in the course of offering his services, the Defendant Ken
25 Chase d/b/a Free Do Not Call List.org and National Do Not Call List.US represents, expressly or
26 by implication, that he can arrange for consumers' phone numbers to be placed on the FTC's
27
28

1 National Do Not Call Registry.

2 28. In truth and in fact, the Defendant cannot arrange for consumers' phone numbers
3 to be placed on the FTC's National Do Not Call Registry.
4

5 29. Therefore, the Defendant's representations as set forth in Paragraph 27 are false
6 and misleading and constitute a deceptive act or practice in violation of Section 5(a) of the FTC
7 Act, 15 U.S.C. § 45(a).

8 **CONSUMER INJURY**

9 30. Consumers nationwide have suffered or will suffer substantial injury as a result of
10 the Defendant's violations of Section 5(a) of the FTC Act. Absent injunctive relief by this Court,
11 the Defendant is likely to continue to injure consumers and harm the public interest.
12

13 **THIS COURT'S POWER TO GRANT RELIEF**

14 31. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant
15 injunctive and other ancillary relief, including consumer redress, disgorgement and restitution, to
16 prevent and remedy any violations of any provision of law enforced by the Federal Trade
17 Commission.
18

19 32. This Court, in the exercise of its equitable jurisdiction, may award ancillary relief
20 to remedy injury caused by the defendants' law violations.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, the plaintiff requests that this Court, as authorized by Sections 13(b) and
23 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, and pursuant to its own equitable powers:
24

25 1. Award the plaintiff such preliminary injunctive and ancillary relief, including a
26 temporary restraining order, as may be necessary to avert the likelihood of consumer injury
27 during the pendency of this action, and to preserve the possibility of effective final relief;
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

2. Permanently enjoin the Defendant from violating the FTC Act;

3. Award such relief as the Court finds necessary to redress injury to consumers resulting from the Defendant's violations of the FTC Act, including but not limited to, rescission of contracts, the refund of monies paid, and the disgorgement of ill-gotten gains by the Defendant; 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.

Respectfully submitted,

WILLIAM E. KOVACIC

David M. Newman

DAVID M. NEWMAN (54218)

Federal Trade Commission

901 Market St, Suite 570

San Francisco, CA 94103

Telephone: 415-848-5100

Facsimile: 415-848-5184

ELIZABETH A. HONE

BRAD WINTER

600 Pennsylvania Avenue NW

Washington, DC 20580

Telephone: (202) 326-3207

(202) 326-2597

Facsimile: (202) 326-3395

Dated: May 6, 2003